

7h. Sect

THESIS FOR THE DEGREE OF Ph.D.

SUBJECT:-

AN EXAMINATION OF THE GRANTS OF LAND MADE TO THE  
SCOTTISH CHURCH IN THE TWELFTH AND THIRTEENTH CENTURIES  
WITH SPECIAL REFERENCE TO SECULAR SERVICES.

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## PREFACE

The subject to be discussed in the following pages is in nature so comprehensive that some definition of the scope and content of this essay is required.

The term 'secular service' has been viewed in its widest sense as covering all the various duties owing to a secular superior, whether Crown or subject. The exact significance of the well-known term 'forinsecum servitium' and the relation of ecclesiastical fiefs to this burden, especially in its military aspect, have been discussed at some length, for they seemed to be questions fundamental to the whole inquiry.

The method followed was to draw up a list of all the different burdens, important and insignificant alike, and to work through all accessible charters for illustrations of their relation to Church tenure. For this part of the work, which was naturally protracted, the printed Chartularies of the various Scottish bishoprics and religious houses were by far the most important sources, though such miscellaneous documents as are contained in the Register House Transcripts, the Fraser family-books, and the Historical MSS. Commission Reports were not ignored. Any conclusions which may have been tentatively reached below are based solely upon charter evidence. The chief secondary authorities were consulted, but their reading of the facts was not always accepted, if it seemed that a different interpretation was more probable on the strength of primary evidence. Indeed, the whole purpose of this investigation would have been defeated, if the opinion of previous workers in the field had everywhere been deferred to.

It has been thought advisable to supplement this

general review of the Chartularies from the angle of the individual services by an analysis of the conditions attaching to the charters of donation in one or two of the Registers. For this purpose, Melrose, Dunfermline, Glasgow, and Arbroath have been selected, geographical location determining the choice. The same degree of detail was not considered necessary for each, and so the analysis of the Melrose grants is more exhaustive than that of the other three.

In any examination of early land grants, a knowledge of local topography is a desideratum. In supplying this need, the two publications by the Scottish History Society of the chartularies of Inchaffray and Lindores are of much greater help to the student than the Registers issued by the various Clubs, valuable though the latter certainly are. There is a need for a re-editing of the majority of these Club publications on the lines adopted by Lawrie in his 'Early Scottish Charters', or by Dowden in his volumes for the Scottish History Society. Their discarding of the abbreviations of the old clerical scribes and their topographical notes to each charter are steps in the right direction.

Finally, though no claim is advanced to anything like infallibility of judgment, it may be stated that the following pages represent an honest and conscientious attempt to throw some light upon a subject which has never before been comprehensively treated. It is hoped that what is written here will not be without its interest or utility to students of later Church history, for whom this essay may be said to represent a quarrying amongst the foundations.

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Secular Service - Its Nature and Scope:-

For the purposes of the present inquiry, the term 'secular service' must be considered in its widest connotation as comprehending all the burdens attaching to the tenure of land, which were due to the Crown or some other secular superior. In the Canon Law as defined in the 12th century by Gratian of Bologna, it was contrasted with 'spiritual service', which, comprising such burdens as 'procurations', 'synodals', 'oblations', was due to an ecclesiastical superior, whether Pope or Bishop or Abbot.

According to feudal theory, there was no land without its lord; and this doctrine of 'nulle terre sans seigneur' was doubtless recognised in the Scotland of the 12th and 13th centuries. Similarly, it might be contended that there was no land without services or burdens of some sort pertaining to it. The two terms 'land' and 'service' were so bound up with each other, that, to say of a man that he held so much land, was practically equivalent to saying that he owed so much service. It is true, of course, that the service attaching to a particular piece of land might be remitted in favour of the tenant. But no feudal lawyer would go so far as to maintain that that particular 'tenement' was free of the burdens inherent in it. The vital distinction was that the grantee, and not the land granted, was freed from the burden of service. Land and service were so inextricably linked in feudal eyes that the one could never be dissociated from the other. In respect of a specific tenant, the service might lie in abeyance, but there could be no absolute divorcing of burdens from land. This fourfold relationship between grantor, grantee, grant, and services is of supreme importance with regard to the donations made to the mediaeval Church in Scotland.

What may be called the theory of feudal tenure is clearly expounded by Pollock and Maitland in their chapter on 'Frankalmoign' where they emphasise this distinction between the obligation of the tenement and the obligation of the tenant. "This idea is so deeply engrained in the law that the tenement is constantly spoken of as though it were a person who could be bound by obligations and perform duties: hides and carucates must send men to the war, must reap and mow, and do suit of court."<sup>1</sup> In considering the secular services owing by the Scottish Church in the feudal period, therefore, it is essential to keep in mind the fact that, though services might be exigible from the lands in the possession of the Church, it did not follow that these were to be performed by the clerical landholders, for in the majority of cases, the benefactors shouldered the burdens pertaining to the lands granted by them.

In examining the charters of the period, it is necessary to distinguish clearly between 'rights' and 'duties' attaching to the tenure of land; for the former were privileges to be enjoyed, the latter burdens to be discharged by the grantee. This inquiry is obviously concerned mainly with the latter, viz. duties or burdens. There is no charter more comprehensive in its terms, and therefore more illustrative of the various rights and duties inherent in mediaeval land tenure than the following confirmation by Alexander II. of the possessions of the Knights Hospitallers in Scotland. In so far as it will exemplify most of the topics to be considered below, we shall quote it practically in extenso. After stating that all lands, churches, etc., were to be held in free, pure, and perpetual alms, it runs as follows:-

"Tenendas....cum sock et sack, cum tol et them, et Infang-andthef, et cum omnibus aliis libertatibus et liberis consuetudinibus et quietanciis suis, in bosco et plano, in pratis et pascuis,

(1) English Law, vol. 1., p. 215.

in aquis et molendinis, in viis et semitis, in moris et maresiis, in stagnis et vivariis et piscariis, in grangiis et virgultis infra burgum et extra, et in omnibus rebus liberas et quietas de placitiis et querelis, scutagio, auxiliis, et assisiis, et de operatione castellorum et pontium, de blodewytte et de feterwitte, de passagio, pontagio, lestagio et estallagio, et quietas de omni toloneo et de omni seculari servicio et servili exactione, et de omnibus aliis consuetudinibus secularibus excepta sola iusticia hominis condempnati, et exceptis quatuor loquelis que ad coronam nostram pertinent, scilicet de Roboria, de Murthere, de combustione, et femina efforciata. Volumus etiam et concedimus omnibus hominibus predictorum fratrum et qui de eis.....tenent in burgo aut extra burgum ut quieti sint ab omni toloneo et ab omnibus aliis consuetudinibus in omnibus empcionibus et vendicionibus mundanis qualitercunque contingentibus. Volumus insuper et firmiter precipimus ut si predicti homines eorum et tenentes coram nobis vel aliquibus ballivis nostris pro aliquo delicto fuerint amerciati, prefata amerciamenta Sancto Johanni et predictis fratribus quiete remaneant in perpetuum. Et si predicti fratres aliquo modo fuerint amerciati, sint quieti pro una ulna albi scarleti".....(1231)'

In this charter, 'sock', 'sack', 'tol', 'them', and 'infangandthef' are given as rights to be enjoyed by the Knights of St. John. Of actual secular service to be performed there is none specified, but the enumeration beginning with 'placitiis' and ending with 'toloneo' can be taken as an illustration of the burdens from which the soldier-monks were to be exempt. Obviously, much of the terminology is mere feudal style, to be found in most of the deeds of the period, the opening terms, for example, conveying little



more than a grant of jurisdiction with freedom from external interference. It would be irrelevant to enter here into a discussion of the well-known phrases "in bosco et plano", "in pratis et pascuis", etc., which Cosmo Innes has interpreted very clearly,<sup>1</sup> but such terms as 'auxiliis', 'operacione', 'toloneo', etc., are of great importance for our subject, and will be treated in some detail below.

In David I.'s charter to Melrose, granted about 1143, we find the immunity conferred in these words: "...quietas ab omni terreno servitio et exactione seculari, perpetuo tenore possidendo<sup>2</sup>". The words 'earthly service' might well be called the key words for our investigation, for we shall have to determine what connotation may be given to them, or, in other words, what secular burdens they comprehend.

Let us compile a list of the various secular services which were normal burdens upon the holding of land in mediaeval Scotland:-

- A. Personal:
  1. 'Exercitus' or military service generally.
  2. 'Expeditio' or travelling in the King's service.
  3. 'Operatio' or giving of labour.
  4. 'Secta' or attendance at courts.
  5. 'Ward' in the sense of castle-guard.
- B. Payments (in money or in kind):
  6. 'Auxilia' or 'aids'.
  7. 'Geldum' analogous to 'auxilia'.
  8. 'Multurae' or mill-dues.

(1) "Legal Antiquities", pp. 42-60.      (2) Lib. de Melros, no.1.

9. 'Toloneum' or payment of toll.
10. 'Tallagi<sup>ign</sup>i' or special feudal burden.
11. 'Scutagium' ditto.
12. 'Maritagium' ditto.
13. 'Relevium' ditto.
14. 'Ward' ditto.
15. 'Forfeits' and 'Fines'.
16. 'Escheats'
17. 'Decimae' or tithes.
18. 'Can' or rent-payment in kind.
19. 'Conveth'
20. 'Corody'

C. Judicial:

21. 'Placita'
22. 'Querelae'
23. 'Assisae'

D. Miscellaneous:

24. 'Hospitagium'
25. 'Vigilia burgi'
26. 'Claustura; etc.

It will be our task to determine how far the grants of land to the mediaeval Scottish Church carried with them immunity from these burdens, which, taken all together, can be designated 'secular service'. Many of the above will require careful and individual consideration, while others are of relatively slight significance for our subject.

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## B. Land Burdens in Celtic Scotland.

Despite the fact that several of his conclusions have been challenged and overthrown by modern students, Skene still remains our foremost authority in matters relating to pre-feudal Scotland. No doubt, as Macphail says,<sup>1</sup> he was trying to reconstruct the Celtic polity largely from Irish sources, and, as a result, it may not follow that what he describes is entirely accurate. To the student of early Scottish history, nevertheless, he must remain an invaluable guide.

Though much of the land in Celtic Scotland was held in common, large areas were set apart for the maintenance of the King, and the tribal magnates and officials. These, in some cases, included not only rights of occupancy of land, but also rights to exact personal services, civil and military, accommodation and sustenance when travelling, and rents in money and in kind. The land thus acquired by the tribal chieftains was held partly as demesne (to use a feudal term) and partly let out to tenants.

In the same way, lands were acquired by the Celtic Church. The ecclesiastical dignitary was bound, like any other magnate, to provide for the maintenance of his 'family', i.e. his clergy, and in other respects his status was similar to that of the secular chieftain. It was to the Church, indeed, that were made the earliest grants of land of which we have record. These are contained in the 'Book of Deer', and though the date of the Gaelic MSS. was probably the end of the 11th century or the beginning of the 12th, the entries relate to grants made considerably earlier. As Lawrie remarks: "If there were earlier Scottish writers, and if grants and transfers of lands were committed to writing, the

(1) 'Highland Papers', vol. 2, p. 228.

writings have perished; only a few 'notitiae' written in the 12th century record the tradition of older grants to two or three religious houses".<sup>1</sup> They are the only evidence of pre-feudal grants relating to land in Scotland. The earliest grants of land were made verbally without writing, and a short written record was made afterwards. Dr Stuart in his Introduction to the Spalding Club edition of the 'Book of Deer' points out that, whereas later grants in feudal times bear usually to be confirmations of former written grants, the confirmations referring back to the grants narrated in the 'Book of Deer' omit any such phrase as "sicut carta istius testatur" - indicating the absence of any earlier writing.<sup>2</sup>

The 'Book of Deer' does seem to confirm the fact that mormaer and toschach had rights in land that could be alienated or discharged. Even where the grants bear to convey lands, they probably conveyed not so much what we should now call a 'dominium utile' or property in the lands, as a 'dominium directum' or right of superiority, for example, rights of jurisdiction and exaction of dues and services. The lands granted must have been of considerable extent, and more than could have been personally occupied by the residents at Deer. When, therefore, they are said to be granted free from mormaer and toschach, and free from all other exactions, that does not mean that the actual occupiers of the lands granted were so freed, but only that the grantees were; and the exactions would be claimed by the grantees instead of by the grantors. The occupiers of the lands in question would be no better off than before, for they would merely have one lord substituted for another.<sup>3</sup>

(1) 'Early Scottish Charters', preface.

(2) Stuart, op. cit., lxxiii.

(3) Cf. Maitland, 'Domesday Book and Beyond', p. 227.



The burdens upon the land held by the community in Celtic Scotland were, according to Skene, principally four:- can, conveth, feacht, and sluaged. These are to be found, under a feudal nomenclature, still attaching to the Crown and Church lands during the 12th and 13th centuries. The first were fixed payments in kind, the two latter were personal services to which the possessor of the land was subject.

"Canum", according to Sir John Skene, "in sindrie charters and infeftment of lands, specially halding of the kirk, is commonly used for the duety and revenue quhilk is paid to the superior or lord of the land, and specially to bischops or kirkmen, quhidder it be quheat, beir, aites or uther kinde of victuals; salt, or summes of money".<sup>1</sup> It was a share, payable to the Crown or other landlord, of the produce of lands, either in grain in the case of arable, or in live-stock in the case of pastoral lands. The name 'cain' was applied also to the exaction of part of the cargo by way of customs on shipborne merchandise, afterwards commuted to a money payment. W.F. Skene maintained that it was a recognised burden only upon the Crown lands, and that it ceased as soon as the possessor of the land was feudally invested.<sup>2</sup> Lawrie describes it as a delivery of produce, animals, poultry, etc., made as part of the rent by tenants, or of the dues by a vassal to his superior.<sup>3</sup>

In many ways 'Conveth' is a more interesting term than 'Can'. Both in Wales and in Ireland, the chiefs of a tribe had the right to be supported by their followers when passing through their lands, and the same right prevailed in Celtic Scotland.

- (1) "De Verborum Significatione"
- (2) "Celtic Scotland", vol. 3, p. 231.
- (3) "Early Scottish Charters", note on no. 125.

It came to signify a night's meal or refection given by the occupiers of the land to their superior when passing through his territory, which was exigible four times a year. In course of time, the obligation to provide what supplies might be necessary came to be limited to fixed amounts of produce apportioned according to ploughgates of land. For example, Malcolm IV. granted to Scone at the Feast of All Saints for the conveth, from every ploughgate of land belonging to the Abbey, 1 cow, 2 pigs, 4 clamni of meal, 10 thraves of oats, 10 hens, 200 eggs, 10 bundles of candles, 4 nummates of soap, and 20 half meales of cheese.<sup>1</sup> Another name for conveth was 'Waytinga' which was in 1292 assessed in the Exchequer Rolls at 24 cows per annum for 2 nights at Forfar, and  $13\frac{1}{2}$  cows per annum for  $1\frac{1}{2}$  nights at Glamis. It is also found frequently under the name of 'Corody', for example, as a payment of 30 shillings in commutation of one annual night's refection in the time of David I.<sup>2</sup>

// The 'Feacht' and 'Sluaged' consisted, according to Skene, of a general obligation, originally upon the members of the tribe, and afterwards upon the possessors and occupiers of what had been tribe territory, to follow their superiors and chiefs, as well as the sovereign, in his expeditions and wars. They are usually termed 'expedition' and 'hosting', and in Scotland the burden was apportioned upon the davach of land. These obligations seem to have constituted what is called in some charters 'Scottish Service' ('servitium Scoticanum'). The question of the exact nature of this service and its relation to 'servitium forinsecum' we must, to obviate repetition, reserve for discussion below when the latter term is being considered.

The obligation to serve in arms, to follow the summons

(1) Lib. de Scon., no. 5.      (2) Early Scottish Charters, no. 178.

of the King or chief to war, was one of immemorial antiquity. The defence of the homeland would seem to have been the duty of every freeman. It was common to all the countries of western Europe. Frankish 'Capitularies', Anglo-Saxon 'dooms', the Brehon Laws - all supply evidence of this primary obligation. Possibly the best analogy to the 'Scottish Service' of North Britain is the duty of fyrd-attendance in Anglo-Saxon England - a burden which was the most important part of the 'trinoda necessitas' attaching to land tenure.

In the absence of written evidence, it is impossible to say definitely how far the grants of land made to the Celtic Church carried with them immunity from secular burdens. On the strength of the Macbeth grant of the land of Kirkness to the Keledei of Loch Leven, we might infer that the possessions of the Celtic Church were highly privileged as regards secular service. Running as it does: "Cum omni libertate collata fuit villa de Kyrkehues....absque omni munere et onere et exactione regis et filii regis, vicecomitis, et alicuius et sine refectione pontis et sine exercitu et venatione, sed pietatis intuitu et orationum suffragiis..." the inference would seem to be justified. But the rashness of generalising from one particular case is obvious, and more so when the authenticity of that case is suspect; for, as Lawrie points out, the reference to the King's son, to the sheriff, to the duty of bridge-repairing, and to 'exercitu' seem to prove that this part at least of the charter was composed as late as the reign of David I. A later grant to the Keledei of Loch Leven by Malcolm III. and Margaret of Balcristie in Fifeshire states simply that the land is to be held "cum eadem libertate ut prius".<sup>2</sup>

(1) Early Scottish Charters, no. 5. (2) Ibid., no. 8.



The only safe conclusion as to the tenure of land by the Church in pre-feudal Scotland is that land grants did carry with them considerable privileges and immunities, but that the duty of 'hosting' in defence of the country, of performing 'Scottish Service', was generally reserved. When we read that the freemen of Anglo-Saxon village communities carried through their fyrd service, when required, under the leadership of the parochial priests,<sup>1</sup> we feel warranted in inferring that the clerics of contemporary Scotland were not exempt from the duty of military service in case of local or national emergency.

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#### C. The Nature of Frankalmoign

Frankalmoign, or 'libera elemosina', may be defined as a species of spiritual tenure, whereby a religious corporation held lands given by a donor to them and their successors for ever. In England, it was a tenure dating from Saxon times, held not on the ordinary feudal conditions, but discharged of all services except the 'trinoda necessitas'. But, according to Littleton,<sup>2</sup> "they which hold in frank-almoign are bound of right before God to make orisons, prayers, masses and other divine services for the souls of their grantor or feoffor, and for the souls of their heirs which are dead, and for the prosperity and good life and good health of their heirs which are alive. And therefore they shall do no fealty to their lord, because that this divine service is better for them before

(1) English Society in the 11th century, p. 25.

(2) Treatise on Tenures, s. 135.



God than any doing of fealty."

Pollock and Maitland draw a distinction between a grant in frankalmoign and a grant for the return of a definite spiritual service such as 'singing a mass once a year', or 'distributing a certain sum of money among the poor', etc. "Stipulations for definite spiritual services...were very rare when compared with gifts in frankalmoign."<sup>1</sup> What was to be the position of lands in which some definite service was reserved? On this point, Scottish practice was marked off from English, for in the latter, if the service specified were of a secular kind, the tenure was for all practical purposes classed as one of the other free tenures, generally socage. If it were of a spiritual kind, it was called tenure by 'Divine Service'. Cf. Littleton, section 137, "Such tenure shall not be said to be tenure in frankalmoign, but is called tenure by divine service. For in tenure in frankalmoign, no mention is made of any manner of service, for none can hold in frankalmoign, if there be expressed any manner of certain service that he ought to do." If such a distinction were drawn in the theory of Scottish feudal land tenure, it certainly was not in practice, for innumerable examples will be found of reservations of secular service of some sort where the grants are made in free, pure, and perpetual alms.

The word 'elemosina' expressed at first not so much a specific mode of tenure as the motive which had prompted the gift. Holding lands 'in alms' was practically equivalent to holding them 'in charity' at the pleasure of the donor. It may well be for this reason that most of the charters of the period under review are careful to state that the gift has been made not merely in alms,

(1) History of English Law, vol. 1, p. 219.

but in perpetual alms. Domesday Book contains several instances of the donee in an elemosynary grant being a layman, but parallel cases are difficult to find in the Scottish chartularies. The following example from the Moray Register, while not an exact parallel, may be cited:

"Richard, Bishop of Moray, grants to Patrick, son of William, the church of Abernethy in free and perpetual alms. He adds a half davach '*que spectat ad predictam ecclesiam*' to be held for life for an annual payment of three shillings."

In this case, the grant is not made to a church or monastery but to an individual, who, being a cleric, is bound to celibacy. The epithet 'perpetual' would seem, therefore, to be mere style, for, the gift being made to Patrick alone and not to his successors, it was bound to lapse at his death, and revert to Moray.

The idea that the tenant in frankalmoign holds his land by a service done to his lord seems to grow more definite as the general feudal theory of tenure hardens and becomes systematised. As one of the feudal tenures, frankalmoign must conform to the general rule that tenure implies service. In all charters of this kind it is usual to find the good of the donor's soul, and the souls of his kinsfolk, or of his lord, or of his King, mentioned as the motive for the gift. The land is bestowed '*pro anima mea*' or '*pro salute animae meae*'.

Another point of some interest with regard to frankalmoign is that the grant was made primarily to God. As Bracton says: "*Primo et principaliter fit donatio Deo et ecclesiae...secundario canonicis vel monachis vel personis.*"<sup>2</sup> A gift, for example, to the Abbey of Scone, would take the form of a donation "to God and

(1) Reg. Morav., no. 44. (2) Bracton, fol. 12.

St. Mary and St. Michael", etc., or "to God and the Abbot and canons there serving.." Clauses were frequently inserted which contained threats of ecclesiastical penalties for those who should venture to disturb or dispute the donee's possession; and it was the normal practice for the great bishoprics and abbeys to obtain a Papal confirmation of the gifts already made. In the 12th and 13th centuries, when Papal power was very high, and the penalty of excommunication a real menace, the moral effect of such Bulls of confirmation upon the average lay mind must have been considerable. According to Maitland "The phrases which seem to make God a landholder cannot be ignored as of no legal value, for they naturally suggest that land given in frankalmoign was utterly outside the sphere of human justice."<sup>1</sup> The most superficial glance at the charters of the period would suffice to show clearly the great gulf which separated the theory and practice of tenure 'in elemosina'.

Consider for a moment the normal form of the grant in frankalmoign:-

"W. dei gratia Rex Scottorum....omnibus probis hominibus... salutem. Sciatis nos pro salute animae meae....dedisse et hac mea carta confirmasse Deo et monasterio....totam meam terram de X. Tenendam in liberam, puram et perpetuam elemosinam, solutam et quietam ab omni exactione, onere, et servitio seculari..."

For our purpose, the most important part of such a charter is the 'Tenendum' clause; in this case, the clause which states that the land will be free and exempt from all exaction, burden, and secular service. Indeed, the feature of elemosynary tenure which later attracted the attention of lawyers was a negative one, viz. the absence of any service that could be enforced by the secular courts. The language of the charters is generally very

(1) History of English Law, vol. 1, p. 223.

sweeping in specifying privilege and immunity, but the question must always remain for decision whether phrases like 'ab omni exactione' might in practice be more precise and stronger, and might be so claimed in a court of law.

Let us now consider an aspect of tenure in frankalmoign which is of some importance for this inquiry, viz. the different methods of wording the 'Tenendum' clause. The following were the chief styles adopted:-

1. In alms      2. In free alms.      3. In free and pure alms.      4. In perpetual alms.      5. In free, pure, and perpetual alms, etc., etc.      Indeed, the changes are rung by the mediaeval clerks on all possible combinations of the above three terms. The simpler styles are generally to be found in the earlier charters: indeed, in many of them the word 'elemosina' does not appear, as for example:-

- (a) Edgar's grant of Coldingham to the monks of St. Cuthbert, with a confirmation of all their lands in Lothian, to be held "*ita liberas et quietas cum omnibus consuetudinibus sicut eas ego ipse habui in mea propria manu.*"<sup>1</sup>
- (b) Ethelred's grant of Auchmoor to the Keledei of St. Serf's "*cum summa reverentia et honore et omni libertate et sine exactione et petitione cuiusquam in mundo.*"<sup>2</sup>
- (c) Edgar's grant of Swinton to the monks of St. Cuthbert - "*liberam et quietam in perpetuum habendam ab omni calumnia.*"<sup>3</sup>
- (d) Alexander I.'s foundation charter to the Priory of Scone, "*liberam et solutam et quietam ab omni exactione et inquietudine.*"<sup>4</sup>

Although in these cases there is no specific naming of the grants as elemosynary, there can be little doubt that their

(1) E.S.C., no. 18.      (2) Ib., no. 14.      (3) Ib., no. 20.  
 (4) Ib., no. 36.



possession by ecclesiastical corporations was governed by the same rules and understandings as the ordinary fief held in frankalmoign. That we may safely identify the two seems warranted by a 'tenendum' clause like the following: The grant by David 1. to the canons of St. Andrews of a fishing and a toft in Berwick, though not specifically stated as being in alms, was to be held "ita liberam et quietam ab omni consuetudine et servitio seculari sicut liberius et quietius elemosina potest dari et concedi."

There are several other charters in Lawrie's collection which prove that the actual naming of a grant as elemosynary was not an indispensable condition of the land in question being freed from all secular burdens. Indeed, the holding of land 'in feodo' of a secular superior was not incompatible with conditions of tenure identical with those of the normal grant in alms. For example, we find Earl Henry granting to Ernald, Abbot of Kelso, the toft of Dodinus in Berwick, to be held in feu ('ad tenendum de me in feodo') but as freely and quietly as the other possessions of his church are held 'in elemosina'.<sup>2</sup>

It has been maintained by some that careful attention should be paid to the terms 'free', 'pure', and 'perpetual', as used to qualify grants in frankalmoign. Consider the following views:-

"More especial attention is to be paid to the terms of the charter if the word 'liberam' is wanting. In such cases it is very common to find reservations more or less numerous."<sup>3</sup> (Dowden)

"We have spoken as though a gift in frankalmoign, in free alms, always implied that no secular service was due from the donee to the donor. But the words generally used in such gifts

(1) E.S.C., no. 168. (2) Ibid., no. 193.  
 (3) Mediaeval Church in Scotland, p. 158.

were 'free, pure, and perpetual alms', and in Bracton's day, much might occasionally turn on the use of the word 'pure'. Seemingly there was no contradiction between a gift in 'free and perpetual' alms and the reservation of a temporal service, and many instances may be found of such gifts accompanied by such reservations. This will give us cause to believe that the exemption from secular service had not been conceived as the most essential feature of tenure in frankalmoign; and if we find, as well we may, that a donor sometimes stipulates for secular service, though he makes his gift not only in 'free' but even in 'pure' alms, our belief will be strengthened."<sup>1</sup> (Pollock and Maitland)

"It was not impossible that even as between donor and donee some secular service might be reserved if the gift were only in 'free and perpetual alms', and not in 'free, pure, and perpetual alms'."<sup>2</sup> ( Holdsworth )

Dowden considered 'free' to be the key-word, while the English authorities inclined to the belief that much might turn upon the interpretation given to the word 'pure'. This point is of obvious significance for our subject, and so we must give it some consideration by reviewing it in the light of the evidence supplied by the Scottish chartularies. The following examples have been carefully selected to enable us to reach some conclusions on the matter:-

- (a) Grant by Alexander 11. to Moray of three davachs of land in Fynlarg for the sustenance of 'capellani solitaires', to be held in free and perpetual alms for the rendering of the forinsec service in the army which pertained to the said three davachs, but to be exempt from the paying of 'aids' ('de auxilio faciendo').<sup>3</sup>

(1) English Law, 1., p. 224. (2) English Law, 3., p. 35.  
(3) Reg. Morav., no. 37.

- (b) In the same charter, Alexander granted to Moray the land of Logynfythenach, to be held in free, pure, and perpetual alms, "ita quod de eadem terra nihil exigi possit ullo tempore preter solas orationes."<sup>1</sup>
- (c) In the early 13th century, Malcolm, Earl of Fife, gave to Moray the church of Inverhoven with a davach of land justly pertaining to it, to be held in free, pure, and perpetual alms, "salvo servitio domini Regis pro predicta davacha si quid servitium inde habere debeat."<sup>2</sup>
- (d) Hugh Ridel, lord of Cranston, granted to Kelso in free, pure, and perpetual alms the 'villa' and tenement of Preston, to be free from all service, forinsec and intrinsic, and all secular service, "Salvo meo....viginti solidos....annuatim in perpetuum ab eisdem monachis." (c. 1320)<sup>3</sup>
- (e) A grant to Inchaffray by Richard de Leicester of land in Perth in pure and perpetual alms for an annual 'reddendo' of 16 shillings. (1240)<sup>4</sup>
- (f) A grant to Arbroath by Turpin, Bishop of Brechin, of a toft and croft in Stracathro in free and perpetual alms, exempt from all service "preter commune auxilium Regis." (end of 12th century.)<sup>5</sup>
- (g) A grant to Dunfermline by Alexander II. of the land of Dollar in free and perpetual alms, "faciendo forinsecum servitium quod pertinet ad dictam terram."<sup>6</sup>
- (h) A grant to the Priory of St. Andrews by Roger Wyrfauch of land in Cuneveth in free, pure, and perpetual alms, "Salvo forinsecum servitium domini Regis, videlicet quantum pertinet ad dimidiam davacham."<sup>7</sup>

(1) Moray, no. 37. (2) Ib., no. 50. (3) Kelso, l. no. 244.

(4) Inch., no. 69. (5) Arb., l. 75. (6) Dunf., 75.

(7) St. And., p. 335.

- (i) A grant to Newbattle by Mariota, widow of Nigel de Carrick, of land in Maysterton in free, pure, and perpetual alms. "Faciendo etiam sectam curie domini Regis apud Edinburgh que debetur pro eadem." (early 14th)<sup>1</sup>

Such instances could be multiplied many times from the pages of the various chartularies. They prove definitely that Dowden was mistaken in assuming the word 'free' to be vital, for there are numerous examples of lands granted 'in liberam elemosinam' and yet burdened by some reservation of service. There is more support for the Maitland contention that 'pure' was the important word. But for the necessity of guarding against over-hasty conclusions from isolated examples, one might well accept (a) and (b) above as a complete justification of his theory. There, in the one charter, we have two separate grants of land, the first in free and perpetual alms and burdened; the second in free, pure, and perpetual alms, and totally free from secular service. Further support is forthcoming from the pages of Bracton's 'Note-Book' where we find the following: "...Plures terrae datae sint in elemosinam ecclesiis quarum quaedam datae sunt in liberam, puram et perpetuam elemosinam, illa scilicet que nullum faciunt servitium, alia in liberam elemosinam tantum, scilicet illa que faciunt servitium quod ad terram illam pertinet."<sup>2</sup> Nevertheless, the fact that there were several charters where the adjective 'pure' was associated with a reservation of service will justify us in hesitating to accept Maitland's suggestion as applicable to Scotland. The following analysis of the charters contained in Lawrie's collection, and in volume one of the Melrose Register should help us to reach some definite conclusions:-

(1) Reg. de Neubottle, no. 55.  
 (2) Note Book, case 21.



'Early Scottish Charters':-

1.	(a)	No 'elemosina' without reservation .....	16
	(b)	ditto. with ditto. ....	4
2.	(a)	In alms, without reservation .....	12
	(b)	do. with do. ....	0
3.	(a)	In free alms, without reservation .....	2
	(b)	do. with do. ....	0
4.	(a)	In perpetual alms, without reservation .....	48
	(b)	do. with do. ....	1
5.	(a)	In pure alms, without reservation .....	0
	(b)	do. with do. ....	0
6.	(a)	Free and perpetual, without reservation .....	4
	(b)	do. with do. ....	0
7.	(a)	Pure and perpetual, without reservation .....	1
	(b)	do. with do. ....	0
8.	(a)	Free and pure, without reservation .....	1
	(b)	do. with do. ....	0
9.	(a)	Free, pure, and perpetual, without reservation ...	0
	(b)	do. with do. ...	0

Liber de Melros, vol. 1:-

1.	(a)	Free alms, without reservation .....	1
	(b)	do. with do. ....	0
2.	(a)	Perpetual alms, without reservation .....	11
	(b)	do. with do. ....	0
3.	(a)	Pure alms, without reservation .....	0
	(b)	do. with do. ....	0
4.	(a)	Free and perpetual, without reservation .....	6
	(b)	do. with do. ....	2
5.	(a)	Free and pure, without reservation .....	0
	(b)	do. with do. ....	0

6. (a)	Pure and perpetual, without reservation	.....	16
(b)	do. with do.	.....	2
7. (a)	Free, pure, and perpetual, without reservation	....	56
(b)	do. with do.	....	7

In reckoning these figures, no account has been taken of confirmations, whether by the King or by subject-superiors; for, to take a case in point, if A grants land to Abbey X in free, pure, and perpetual alms, and the royal confirmation contains the clause 'salvo servitio meo', that does not mean that the land will be burdened in the monastery's hands, but that the service pertaining to that land, hitherto rendered by A, must still be answered for by him.

The following conclusions may justifiably be drawn from the above statistics:-

1. That in the first half of the 12th century at least, the fully-developed feudal style was not yet a regular feature of the language of charters, and that the inclusion of the word 'elemosina' was not considered a 'sine qua non' of the freeing of lands from secular services.
2. That the style 'in perpetuam elemosinam' was that most commonly used down to the death of David I., while the epithet 'pure' was rarely employed in the same period.
3. That the full style 'in liberam, puram, et perpetuam elemosinam' was the common currency of the later grant in alms, especially in the 13th century.
4. That the number of grants which carried with them reservations of one sort or another was very small in proportion to the number without reservation of any kind.
5. That generally no special significance attached to the words 'free' and 'pure', which would seem to have been merely words of style and no more.

It seems highly problematical indeed if there were, even in the more feudalised midlands and south of Scotland, any uniform law or understanding on the matter. The different styles used must have varied with the personal predilections of the donor or the monastic scribe. Where, for example, the Kelso clerk would write 'in free and perpetual alms', his Paisley vis-à-vis might word it 'in free and pure alms', and so on. Though in England there might well be some special significance attaching to the word 'pure', in Scotland all forms of the phrase amounted to pretty much the same intention.

Let us now proceed to another aspect of tenure in frankalmoign which has a direct bearing on our subject, viz. the difference between an 'elemosina' held immediately of the Crown, and one held mediately from a mesne tenant. It must be remembered that tenure in frankalmoign was by no means necessarily a tenure in chief of the Crown. Certainly in Scotland great tracts of land were conferred on the Church directly by David I. and his immediate successors; but the feudal landholders, following the example of their sovereigns, were also extremely lavish in their donations. Maitland's dictum with regard to England - "It would seem that the quantity of land held in chief of the crown by frankalmoign was never very large"<sup>1</sup> - does not apply to the same extent to Scotland, for England had no David I. nor a parallel to the liberality shown by William the Lion to his own foundation at Arbroath.

Under the feudal system, the King was the landlord and superior of the whole nation, and so the burdens which were inherent in all land tenure could not be remitted by anyone but himself. He might give land to a religious house in free, pure,

(1) History of English Law, vol. 1, p. 223.

and perpetual alms, in which case not only would the clerical donee be exempt from all secular service, but the land itself as held by the Church would owe no secular service at all. That is to say, the traditional services pertaining to the grant would lie in abeyance, and nothing would be returned to the Crown in respect of it. In the case, however, of a gift from a subject, in free, pure, and perpetual alms, the mere donation could not free the land from all secular service. In the lay donor's hand it was burdened with such services, and so burdened it passed into the hands of the clerical donee. In such cases, it was customary for donor and donee to arrange the incidence of this burden as they pleased, and in many charters a clause was inserted to that effect. As a general rule, the lay benefactor promised to respond for the burden, but occasionally the onus rested with the ecclesiastical donee. Examples of both kinds are not difficult to find:-

- (a) Eva Murthac, Lady of Rothas, granted to Moray in pure and perpetual alms the land of Inverlochty - "*Salvo forinseco servitio Scoticano domini Regis quantum ad eandem terram pertinet, quod predictus Episcopus et sui successores episcopi Moravienses tantummodo facient domino Regi de dicta terra.*" (1263)<sup>1</sup>
- (b) Robert Warnebald and Richenda his wife granted to Arbroath in free and perpetual alms their land in the parish of Fordun - "*Salvo forinseco domini regis in exercitu et communi auxilio de quibus dicti monachi respondebunt.*" (1238)<sup>2</sup>
- (c) Robert de Brus, lord of Annandale, granted to Lindores in free, pure, and perpetual alms his lands in Garviach and Bondes, and promised to respond for all secular service, aid, and hosting. (1261)<sup>3</sup>

(1) Moray, no. 125. (2) Arbroath, l., no. 261.  
(3) Lindores, no. 116.



In the first two of these, the clergy of Moray and the monks of Arbroath receive donations in alms from subject-superiors which are nevertheless burdened with the duty of performing the King's forinsec service . The Bruce grant to Lindores, however, illustrates the normal practice whereby the donor himself undertook to discharge all the services pertaining to his gift.

Frequently nothing is said as to who will shoulder the burden of the services due from the land, and in such cases the responsibility apparently rested with the grantor; for, if the charter of enfeoffment held by the ecclesiastical tenant contained no reservation or stipulation of services due, then such service could not legally be required of him. And if, for example, the donor of the land now held by the Church neglected to answer for these services, causing the King to enforce them by distraining the land for their performance, e.g. by seizing any chattels that might be found on it, then the Church would have its remedy at law against the lord. With regard, therefore, to lands held in frank-almoign from either King or subject, it must be concluded that secular service was exigible only where there was an express stipulation to that effect in the charter held by the elemosinar.

The important question as to whether there were duties regarding, say, the defence of the country, from which no tenant in frankalmoign was exempted, no matter how highly privileged his tenure might be, we reserve for fuller consideration below.

It would appear that where the burden of the forinsec service rested with the Church landholders, they generally passed it on to their lay tenants. In this respect, we must remember that the Church might hold its land 'in full demesne', i.e. hold, posses<sup>s</sup>, and cultivate it; or it might be the feudal superior of

vassals holding the lands under them. In the latter case only, could the forinsec burden be passed on. The Scottish chartularies contain many examples of church lands being feued out to secular tenants for 'reddenda' of money, personal services, etc.

Consider the following:-

- (a) Charter from Moray to Gilbert, son of the Earl of Strathearn, granting the half davach of Kyncarny to be held in feufarm for three marks yearly and the performance of the forinsec service due to the King. (1232)<sup>1</sup>
- (b) Charter by Kelso to Alexander de Redpath of the land of Deryngton to be held in fee and heritage for the annual payment of 30 pence and the rendering of the forinsec service due and wont by right.<sup>2</sup>
- (c) Grant by Arbroath to Alexander, Earl of Buchan, of the lands of Drumsleed, Kulbac, etc., for a 'reddendo' of twenty marks, and the responding for all the forinsec services due from these lands. (1265)<sup>3</sup>

Such instances could easily be multiplied, but nearly all are couched in the same form. We shall cite two other cases which vary a little from this style, and are possibly more instructive. The first is contained in the Kelso Register, where in connection with the lands of Bolden belonging to the Abbey, it is stated that the tenants "respondebunt singulariter de forinseco servicio et de aliis sectis."<sup>4</sup> The second is supplied by an agreement between the Abbey of Arbroath and David of Manuel over the land of Dunnechtyn, which runs thus: "Tam ipse (i.e. David) quam homines sui contribuent in auxiliis regiis et defensione regni sicut alii vicini qui de abbate tenent per scriptum."<sup>5</sup>

(1) Moray, no. 80. (2) Kelso, 2. no. 512. (3) Arbroath, 1, no. 247.  
 (4) Kelso, 2. no. 461. (5) Arbroath, 1. no. 339.

Many instances will of course be found where, in a charter of feufarm from the Church to a layman, there is no reference to any performance of forinsec service. For example, in 1170, Richard de Moreville, Constable of Scotland, announced that he had received 'in firmam' from Engelram of Glasgow the land of Gilmoreston, to be held for fifteen years for the payment of 300 marks, and he added "Et idem episcopus defendet <sup>mei</sup> dictam terram per predictum terminum <sup>um</sup> secunda quod carta sua testatur."<sup>1</sup> In the first volume of the Kelso Register, also, there will be found a series of grants in fee and heritage from the Abbey to secular tenants, stipulating annual money-rents without mention of any other service.<sup>2</sup>

It cannot be assumed, however, on the strength of such examples that the ecclesiastical donors had engaged to perform the forinsec services themselves; for in many cases the lands feued by the Church to laymen were, as held by the Church, already freed from all services, and so there were none to transmit. For example Earl A grants land in alms to Abbey B, freeing it from all service. Abbey B now enfeoffs a layman C to hold in feufarm for a money rent. The forinsec service pertaining to this land will still be discharged by Earl A, and so does not concern B and C at all.

The chief conclusions that we have reached in this discussion of tenure in frankalmoign may be summed up as follows:-

- (a) That in feudal theory no secular service of any kind was exigible from the tenant holding in frankalmoign.
- (b) That there came to be in Scotland, especially after 1153, a wide divergence between the theory and practice of elemosynary tenure.

(1) Glasgow, l. no. 44. (2) Kelso, l. nos. 103-117.

- (c) That the various methods of expressing the 'tenendum' clause meant practically the same thing.
- (d) That, in respect of forinsec service, a distinction must be drawn between eleemosynary fiefs held 'in capite' and those held of a subject-superior.
- (e) That where the land held by the Church was burdened with forinsec service, the duty was passed on wherever possible to the lay tenants of the fiefs so held.

.....

D. 'Servitium Forinsecum'- its Nature and Scope.

We now approach one of the most difficult and most controversial topics in the history of mediaeval Scotland, viz. what was the precise nature of 'forinsec service' - a term found in innumerable charters, but never satisfactorily defined. The subject is a comprehensive one, and a discussion of it will of necessity touch many of the points most vital to a consideration of the secular services exigible from the Church landholder. Most of the leading authorities, English and Scottish alike, have attempted definitions, and we shall reproduce a few of these views:

- (a) Skene identified 'servitium forinsecum' with the old Celtic 'Sluaged', while he considered 'servitium intrinsecum' to be co-extensive with the 'Feacht'. In his opinion, therefore, forinsec service was that given by all landholders to the King to help him in his 'hosting' or foreign wars, while intrinsic service was the 'expedition' or service within the kingdom. At first he



inclined to the view that 'Servitium Scoticanum' meant only the forinsec service,<sup>1</sup> but latterly he came to see that it comprised the intrinsic service as well.<sup>2</sup> These services were essentially of a personal nature, and were apportioned to the davach of land.

(b) Pollock and Maitland<sup>3</sup> are of course not concerned with Scottish Service, but the term 'forinsec service' figures as prominently in the land-charters of mediaeval England. Their view can best be stated by a concrete illustration:- the King enfeoffs A by the service of 2 knights; A enfeoffs B for an annual rent of £10; B enfeoffs C to hold from him in free and perpetual alms. The military service due from A to the King was 'intrinsic' as between these two, but 'forinsec' to B and C. The money-rent was 'intrinsic' as between A and B, but 'forinsec' to C, while the privileged conditions of tenure enjoyed by C were intrinsic between himself and B. To quote their own words: "The terminology of Bracton's day and of yet earlier times neatly expresses the distinction between the service which the tenant owes to his immediate lord by reason of the bargain which exists between them, and the service which was incumbent on the tenement while it was in the lord's hand. The former is 'intrinsic' service, the latter 'forinsec' service."

(c) Vinogradoff's view is radically opposed to the above. He writes: "The various obligations springing from the tenure of the knight, attendance in the lord's host, wardship, marriage, relief, etc., were comprised under the characteristic term of 'foreign service', 'forinsecum', distinguished as such from all other varieties of tenurial dependence.....it was always held in Anglo-Norman common law that 'foreign' service stamps the tenement as a military fee, or a serjeanty akin to it, and that all other

(1) *Historians of Scotland*, IV. 454. (2) *Celtic Scotland*, 3. 234.  
 (3) *English Law*, I. 216.

incidents ought to follow this main distinction."

(d) Ducange defines 'servitium forinsecum' in these words: "Quod non ad dominum capitalem sed ad Regem pertinet, ita dictum quia fit et capitur foris sive extra Servitium quod fit domino capitali unde vocatur etiam Servitium Regale quia specialiter pertinet ad Dominum Regem et non ad alium." And consistently with this statement, 'Servitium Regale' is defined as "idem quod Forinsecum Servitium Militare, quod Regi debetur a subditis et vassallis."<sup>2</sup> This definition seems to have been based on the authority of Bracton's 'De Legibus, etc., Angliae'.

(e) Bracton elsewhere gives the details of a case which supplied Vinogradoff with a basis for his theory. In the 'Note-Book' occurs the following record of a dispute as to the tenure by which certain land was held: "Isabella que fuit uxor Stephani de Ebroycis v. Ricardum de la Bere.....Et Ricardus venit et dicit quod ...de forinsecis serviciis aquietabunt que ad eandem pertinent, unde dicit quod terra illa debet servicium militare.....Et Isabella dicit quod terra illa est socagium.....Et quia attornatus Isabelle cognoscit quod liberi homines faciunt ad hunc servicium forinsecum, et preterea continetur in carta quod terra debet forinsecum, consideratum est quod terra illa non est socagium.." <sup>3</sup>

(f) Dealing with this question, Bishop Dowden writes in his Introduction to the Chartulary of Lindores: "It would be out of place to enter on the discussion of the question disputed by feudalists as to the sense of 'servitium forinsecum'. There is no doubt it applies to services outside those due to the immediate superior in cases of subinfeudation and ordinarily to service due to the king." <sup>4</sup>

(1) Eng. Society in 11th cent., p. 39. (2) Glossarium  
(3) Note-Book, pl. 288. (4) op. cit., p. 75, note 6.

(g) Mr George Neilson, in an article on 'Knight-Service in Scotland' contributed to the 'Juridical Review', maintained first, that forinsec service referred to military services outside Scotland and secondly that it was quite distinct from Scottish service, which as the name implied, denoted services within it.<sup>1</sup>

(h) The best recent pronouncement on this subject, so far as Scotland is concerned, is that of J.R.N. Macphail whose analysis in volume two of 'Highland Papers' is very clear and convincing. After adducing the evidence of the chartularies, particularly those of Moray and Arbroath, he reaches the conclusion that forinsec service and Scottish service were practically the same thing, viz. a burden inherent in the land and dating from Celtic times which required, inter alia, personal military service in case of national emergency.<sup>2</sup>

Having outlined the views held by the chief workers in this field, we shall proceed to an examination of some representative charters, both clerical and lay, referring to Scottish land grants of the 12th and 13th centuries, in order that we may formulate an opinion of our own. We shall consider first forinsec service in relation to Scottish service, and the following examples should help to clarify the issue:-

(a) A grant by Malcolm de Moravia to his son William -  
"Faciendo domini<sup>d</sup> regi dimidium servicium unius militis et  
forinsecum Scoticanum quantum ad dictam terram pertinet."(1280)<sup>3</sup>

(b) A quitclaim by Earl Malise - "Quod non habeamus ius  
habendi...aliquod servicium de domino Willelmo de Moravia nisi  
forinsecum servicium Scoticanum domini Regis in quo nobis

(1) Jurid. Review, 1899, p. 83. (2) Op. cit., pp. 227-245.  
(3) Moray, 'Cart. Orig.' no. 7.



tenetur de terris quas de nobis tenet." (1297) <sup>1</sup>

- (c) Grant by Robert I. to James de Garviach of the forest of Cardys - "Faciendo....quintam partem servitii unius militis in exercitu nostro et Scoticum servitium inde debitum et consuetum" <sup>2</sup>
- (d) Grant by Malcolm, Earl of Lennox, to Arthur Galbraith - "Faciendo...in forinseco servitio domini Regis quantum pertinet ad unam quartariam terre in comitatu de Levenax in servitio Scoticano, pro omnibus servitiis." (1272-92) <sup>3</sup>
- (e) Grant by Malise, Earl of Strathearn, to Malise, lord of Logy - "Faciendo...Scoticanum exercitum et commune auxilium domini Regis quantum pertinet ad predictas terras." (c.1275) <sup>4</sup>
- (f) Grant by John de Murray to William, his brother - "Faciendo...forinsecum servicium Scoticanum quantum pertinet ad dictas terras." (c.1280) <sup>5</sup>
- (g) From an inquest at Abercromby, in Fifeshire - "Item dicunt quod Balcormok reddit servicium unius servientis cum haubergello. Item dicunt quod facit in servicio Scoticano pro una davata terre et dimidia davata." (1270) <sup>6</sup>
- (h) From a charter of Moray by Robert I. - "Faciendo servicium octo militum in exercitu nostro et Scoticanum servicium et auxilium de singulis davatis debitum." <sup>7</sup>
- (i) Grant by Robert I. to William of Strabrok - "Faciendo...forinsecum servitium quantum pertinet ad quintam partem servitii unius militis in exercitu nostro et Servitium Scoticum debitum et consuetum." <sup>8</sup>

(1) Moray, 'Cart. Orig.' no. 17. (2) Aberdeen, l. p. 44.

(3) Cart. de Levenax, no. 28. (4) Reg. Ho. Transcripts.

(5) Hist. MSS. 7th Report, p. 705. (6) A. P., l. p. 102.

(7) Robertson's Index, p. li. (8) R.M.S., l. App., no. 3.



(j) From a charter of Sauchie in Stirlingshire by Robert 1. -  
 "Faciendo...forinsecum servicium nostrum quantum pertinet ad  
 ( ) partem servicii unius militis et Scoticum servicium  
 nostrum." <sup>1</sup>

It will be readily seen from these extracts that the majority tend to identify forinsec service and Scottish service, and many other examples could be cited in support of the same conclusion. There would be no room for doubt upon this point, were it not for the apparent contradiction to be found in the last two charters quoted, where we have the two terms contrasted and given as distinct and separate burdens. It is very doubtful, however, if we can accept the evidence of these exceptions to overthrow the testimony of the much more numerous others which identify the two. It will be noticed that these two grants belong to the early 14th century: indeed, an exhaustive examination of the charters relating to land grants of the 12th and 13th centuries has failed to furnish any corroboration for the view that forinsec and Scottish service were distinct ideas. These two 'reddendos' may be explained by the fact that, by the time of the Bruce, the aspect of the forinsec burden which was most commonly emphasised was the military one, and hence the epithet 'forinsec' might on occasion be employed by clerks to describe any military service, whether forinsec or feudal. For this we have the analogy of English practice, for does not Bracton write - 'That tenement owes forinsec service, therefore it is a military fee and no socage.' As the evidence of the charters all points toward the identification of the two terms, we have no hesitation in saying that Mr Neilson is mistaken when he writes: "A foremost point about forinsec service..is its normal contra-:distinction from 'Scoticum servicium'." <sup>2</sup>

Might not the difficulty presented by these two Bruce charters be surmounted in another way, viz. by giving a slightly different reading to the text by understanding the preposition 'ad' before the words 'Servicium Scoticum' in both cases? The clauses would now read as follows: "To do the forinsec service which pertains to the fifth part of the service of one knight and to our Scottish service." If the liberty be permitted, the contradiction disappears and the two terms stand identified once more.

Mr Macphail's explanation of this difficulty does not seem to be too convincing. He writes as follows: "They (i.e. the examples given by him) also seem to explain why 'servitium Scoticanum' is with propriety sometimes described as 'forinsecum'. That the converse, however, does not hold is well illustrated by a charter of Robert I. to William of Strabrok, where the clause is... (supra, p. 31) That is to say, the grantee had to render to the king of whom he held 'in capite' both the feudal service measured and fixed by the terms of the charter, and also the Servitium Scoticanum due by customary law from time immemorial."<sup>1</sup> He is here identifying forinsec service with feudal service, i.e. with the conditions of tenure as fixed by the terms of the charter - in this case, the fifth part of the service of one knight. Contrast this with what he writes some few pages earlier: "The explanation may be that the word 'forinsecum' primarily denoted that the service was independent of or foreign to the grant; in other words, that it did not, like the stipulated feu-duty or knight's service, depend on the terms of the charter, but was due by customary law..."<sup>2</sup>

We shall have something more to say about the interpretation of a phrase like "forinsecum servicium quod pertinet ad

(1) Highland Papers, 2. p. 233. (2) Ibid., p. 229.

quintam partem servicii unius militis" when we are dealing with forinsec service exclusively. At present we are concerned purely with its relation to Scottish service, and with the approximate nature of the latter.

There is one point which need not detain us long, and that is the undoubted fact that both forinsec and Scottish service were based and reckoned upon the land, whether the unit of assessment were the davach, the ploughgate, or the 'quarter'. Hundreds of 'reddendo' clauses will be found to contain phrases like this - 'quantum pertinet ad sextam partis unius davache', 'ad unam quartariam terre', or 'ad duas carrucas'. It would be superfluous to specify illustrations from the Chartularies, for the point is well established and generally accepted.

Scottish service would seem to have been contrasted with forinsec service in one important respect, however, namely that it was almost exclusively a personal military obligation, exigible in certain circumstances, whereas forinsec service quite clearly possessed a more comprehensive connotation. We read of the duty of 'Scoticum exercitum' (supra, p. 31, (e)) but we never find the term applied to such services as 'auxilia', 'operaciones', or to 'sectae'. The relationship between the two terms may well be explained as follows: The duty of rendering personal service in the King's army and attendance at his expeditions was an undoubted burden upon the holding of land in Celtic Scotland. To this obligation the name 'Scottish service' was given - a term which implies, if it does not prove, that it was a duty pertaining particularly to the old Scottish kingdom north of the Forth. When, however, the kingdoms of Lothian and Strathclyde were annexed to Scotia proper, the burden of the Scottish service, if not the name, must have been introduced into southern Scotland. With the advent



of Norman rule in England, and the infiltration of feudal influences into Scotland from the south, much of the nomenclature of feudalism must have become current in the more Anglicised south-east. The charter-language and conveyancing-styles of 12th century Scotland were undoubtedly modelled on those of England, the reign of David I. being especially prominent for the assimilation of southern feudal practices. 'Servitium forinsecum' was a term which probably originated in England, for it is not to be found in the charters of contemporary France. As a personal burden in which military service figured most prominently, it must, when it had penetrated into the northern parts of Scotland, have suggested an obvious affinity with the old Celtic military burden of the Scottish service. Hence the curious mingling of the two terms by the scribes of the northern churches and religious houses. In their eyes, they connoted the same burden. Viewed in the light of this interpretation, such a 'reddendo' as the following becomes clear: "Faciendo inde....forinsecum servitium domino Comiti de Stradhern quantum ad dictam terram pertinet scilicet Servitium Scoticanum." We may say, therefore, that for Scotland north of the Forth, forinsec service was simply the well-known Scottish service in a new feudal guise. In charters dealing with lands south of the 'Scottish Sea' the term 'Scottish service' is never found, and 'forinsec service' holds uninterrupted sway, save where, in a few cases, the word 'utware' takes its place. There we must leave the question, resting content with these conclusions:-

- (a) Scottish service, which comprised the old Celtic 'Feacht' and 'Sluaged', was a personal service, purely military in its incidence.
- (b) It was assessed upon the land with the davach as unit.



- (c) It was practical<sup>ly</sup> identical with forinsec service, in so far as the military aspect of the latter was concerned.
- (d) It is found exclusively in charters dealing with lands lying north of the Forth, i.e. in the old Celtic kingdom.

Our next inquiry must be to ascertain exactly what duties and burdens were comprehended by the term 'forinsec service'. The following expressions will be found in the charters of the period:

- (a) 'Servitium forinsecum'      (b) 'Servitium extrinsecum'
- (c) 'Servitium forensum'      (d) 'Servitium intrinsecum'
- (e) 'Servitium privatum'

It is fairly obvious that of these, (a), (b), and (c) are variants of the same expression, while (d) and (e) are similarly related. The last named is used by Alan FitzRolland where, in respect of a grant of lands in Lauder to Melrose, he states that he will acquit the monks "de omni servicio forinseco et privato."<sup>1</sup> The use of the word 'privatum' is instructive in respect of the light which it sheds upon intrinsic service, and hence by contrast upon forinsec service. Alan Fitzrolland held his land in Lauder from William the Lion. Part of this holding he bestowed on Melrose. The private services were conceivably those due from the monks to himself, e.g. agricultural service, ditching, carting, etc., while the forinsec services were those pertaining to the Crown, Alan's superior, in respect of the land. In a sense, the forinsec duties might well be termed the 'public' burdens on the tenement, due from this particular fief as from every other in the country.

With regard to the use of the contrasted expressions 'forinsec' and 'intrinsic', though Maitland's view may have the

(1) Melrose, vol. 1., no. 79.

support of mediaeval writers on feudal law, it is very improbable that in Scotland the word 'forinsec', though no doubt not constant in meaning, ever acquired that abstract signification of service to some third party which may have obtained in the law of contemporary England. As Maitland himself acknowledged, this use of the terms 'forinsec' and 'intrinsic' implied a considerable degree of abstraction hardly to be looked for from 12th century land law.

There seems no room for doubt, however, that the word 'intrinsic' or 'private' as applied to services, was used to describe those which were due from grantee to grantor by virtue of the terms of the charter of enfeoffment. But forinsec services, in Scotland at least, seem to have been a royal preserve, to have pertained to the Crown alone. For this inference we have the support of numerous feudal charters, in which the 'reddendo' is frequently expressed thus: "Faciendo forinsecum servitium domini Regis quantum pertinet ad dictam terram," or words to the same effect. As quoted above, also, Ducange defines forinsec service on similar lines when he says - .."vocatur etiam Servitium Regale quia specialiter pertinet ad Dominum Regem et non ad alium." If forinsec service were that which was due to any third party, it should follow that the phrase should occur only in the charters of lands held of subject-superiors, because there could be no third party in any grant held directly of the Crown. But this is not the case, for there are many instances of royal grants in which the grantee is declared bound to render the forinsec service due and wont. For example, Alexander 11.'s charter granting Dollar to the Abbey of Dunfermline contains the reservation - "Faciendo forinsecum quod pertinet ad dictam terram,"<sup>1</sup> while a grant by the same

(1) Dunfermline, no. 75.

king to Gilbert Hostiarius runs as follows - "Faciendo...decimam partem servitii unius militis et forinsecum servitium quantum pertinet ad predictas terras." <sup>1</sup>

Just when we feel justified in stating categorically that forinsec service was due to the Crown alone, we come across 'reddenda' like the following which at first sight seem to explode that theory entirely:-

- (a) A grant of the land of Carnibo to Inchaffray by Roger de Meksen - "Salvo forinsecum servitium domini nostri Regis et faciendo forinsecum servitium ac debitum domino comiti de Stratheryn pro me et heredibus meis." (c.1370) <sup>2</sup>
- (b) Grant by William, Abbot of Kelso, to Alexander de Redpath of the land of Deryngton - "Faciendo...forinsecum servitium nobis et successoribus nostris de iure debitum et consuetum." <sup>3</sup>
- (c) Grant by Clarebald de Esseby to Coldingham of two fishings in the Tweed, free "ab omni forinseco servicio tam versus dominum Regem quam versus dominum meum et heredes suos." <sup>4</sup>
- (d) Confirmation by Walter Percehay of a quitclaim by William Avenel to Thomas Valensis - "Salvo forinseco servicio domini regis et domini episcopi Sancti Andree." (c.1290) <sup>5</sup>
- (e) Charter by Muriella granting Dalrewach to her son-in-law William de Moravia - "Faciendo forinsecum servitium domino Comiti de Stradhern quantum pertinet ad dictam terram." <sup>6</sup>

Such charters, which seem to furnish ample proof for

(1) Reg. Ho. Transcripts. (2) Inchaffray, no. 136.  
 (3) Kelso, 2. no. 512. (4) Coldingham Charters, no. 158.  
 (5) Reg. Hse. Transcripts. (6) Moray, p. 469.

the Maitland theory of forinsec service, present considerable but not insuperable obstacles. In (a) we have a feudal ladder of four rungs, viz. the King, the Earl of Strathearn, Roger de Meksen, and the Abbey of Inchaffray, and, according to the charter, the monks have to respond for the forinsec services due both to the Crown and to the Earl. In (d) there are no fewer than five different people interested in the land, viz. the King, the Bishop of St. Andrews, Walter Percehay, William Avenel, and Thomas Valensis. In all cases we find subject-superiors mentioned as the recipients of forinsec service.

In a charter (c.1248) by Maldouen, Earl of Lennox, to Sir David of Graham, the 'reddendo' is even more curious - "Faciendo mihi...forinsecum servitium domini Regis quando contingit quantum pertinet ad unam carucatam terre in Levenax."<sup>1</sup> Here, the Earl is the grantor, the lands are to be held of him, and yet the King's forinsec service is to be rendered to himself, the Earl. In a later charter (c.1332) of lands in Fife there is a similar clause: "Faciendo nobis....homagium et forinsecum servitium domini nostri Regis quantum pertinet ad predictam terram."<sup>2</sup>

Macphail recognised this difficulty<sup>3</sup> and apparent contradiction, but accepted the statement of Ducange, who bases himself, as meeting the case: "Ad regem pertinet quidem servitium forinsecum nisi tamen, addit Bracton 16, s.7., cum dominus capitalis in propria persona profectus fuerit in Servitio, vel nisi cum pro servitio suo satisfecerit domino Regi quocunque modo." From this it would seem that it was open for the King, if he so desired, to make private bargains with his tenants 'in capite' as to the performance of the forinsec services from any lands which the tenants

(1) The Lennox, vol. 2, p. 11. (2) Wemyss Book, vol. 2, p. 11.  
(3) Highland Papers, vol. 2, p. 230.



might have subinfeudated. That would explain a 'reddendo' which stipulated the rendering of forinsec service to a subject only, but it would shed no light upon 'reddenda' where forinsec service is to be made both to the King and to a subject-superior. The only solution seems to be that, in some cases, the term 'forinsec service' was used to describe any prestations which were independent of or foreign to those contained in the grant. Thus in the Dalrewach charter mentioned above, the services due from William de Moravia to Muriella are definitely stated in her charter, whereas any services due to the Earl of Strathearn, Muriella's superior, are quite distinct from or foreign to those mentioned in her charter, i.e. they are forinsec. This means the adopting of the Maitland interpretation, but it is the only key which will unlock or solve such a problem as the rendering of forinsec service to the Crown and to a subject in respect of the one piece of land. Indeed, the Scottish charters will present many problems on this question of forinsec service unless the student is prepared to admit this double aspect of the term: first, and by far the most common, a service due from the land to the Crown; and secondly, in a few exceptional cases, a service due to some third party, generally the feudal superior of the grantor.

Let us now attempt to reach some conclusions as to the connotation of the term 'forinsec service', i.e. what secular burdens might properly be called 'forinsec'. Once again we shall base ourselves entirely upon the evidence of the charters of 12th and 13th century Scotland. It will be obvious that those innumerable instances where the term 'forinsec service' occurs and nothing more will be of no assistance in determining its content. The following excerpts, however, carefully selected from all available sources, should elucidate the problem to some extent:-

- (a) Charter by Alexander 11. to Moray of the land of Kynmyly, "Faciendo forinsecum servitium in auxiliis et exercitibus et aliis.." (1232) <sup>1</sup>
- (b) Grant by Robert, Earl of Strathearn, to Inchaffray of the land of Rath - "Tenendum...quiete ab omni servicio et exactione seculari solummodo auxilio domini regis quando scilicet ipse dominus rex commune auxilium super totum posuerit. Ego vero et heredes mei totum reliquum forinsecum servitium domini regis quod ad illam terram pertinet pro eis perpetuo faciemus." (1223) <sup>2</sup>
- (c) Grant by Alexander Cumyn, Earl of Buchan, to Aberdeen of the land of Turref. "Nos etiam ac successores nostri forinsecum domini Regis tam in auxilio quam in exercitu et in omnibus aliis demandibus secularibus...acquietabimus." (1272) <sup>3</sup>
- (d) Grant by Alexander the Steward to the church of Lanark - "...homines antedictam terram tenentes forinseca auxilia et omnia servicia terram contingentia facient." (c.1246) <sup>4</sup>
- (e) Grant to Brechin by William, grandson of Earl David, of certain land - "...cum omnibus forinsecis sectis et aliis que ad dictum molendinum pertinent." (c.1267) <sup>5</sup>
- (f) Confirmation by Alexander 11. to Melrose - "Faciendo forinsecum servitium in auxiliis quantum pertinet...de exercitu vero et omni alio forinseco servitio ipsos omnino quietos clamavi." <sup>6</sup>
- (g) Grant by William the Lion to Orm, son of Hugh, of the abbacy of Abernethy, free from all services "excepto communi auxilio, communi exercitu, communi operatione." (1172-78) <sup>7</sup>

(1) Moray, no. 34. (2) Inch., 52. (3) Aberd., 1. p. 31.  
(4) Dryburgh, no. 211. (5) Brechin, 1. no. 3.  
(6) Melrose, 1. no. 207. (7) Reg. Hse. Transcripts.

From these examples, one fact stands out beyond dispute, viz. that what were termed 'common aid' and 'common army' or 'hosting' were recognised forinsec services. The word 'auxilium' may be taken as the feudal name for an old royal right to exact a money tribute from the whole country, probably in case of national emergency. The corresponding term in the earliest charters is generally 'exactiones' or 'consuetudinibus' or 'onera', words which are obviously very vague in meaning. That 'aids' were called forinsec when they were common to the whole country follows from (b) above, where the abbey of Inchaffray is exempted from all forinsec service save the burden of the King's common aid imposed 'super totum regnum'. In (d) also, we have a definite labelling of aids as forinsec, while (a), (c), and (f) also prove beyond all question that the aid was quite definitely a part of the forinsec burden.

The 'aid' was, of course, one of the ordinary feudal payments exigible by the lord from his vassal, especially in tenure by military service. But this normal prestation could not be classed as forinsec, for the characteristic feature of the forinsec aid was the fact that it was common to the whole kingdom and imposed by the Crown. The following extract from a charter to Soltre draws a distinction between the two kinds of 'aids'. Vivian de Mulineys granted a half-carucate in Saultoun "quietam de omni servitio seculari....vel auxilio speciali vel generali."

The 'communis exercitus' referred to so frequently as being part of the forinsec service due to the King was the feudal continuation of the old Celtic 'Sluaged'. We might easily have cited additional charters in which the sole 'reddendo' is "Faciendo

forinsecum servitium in exercitum quantum pertinet..." As noted above, it is this aspect of forinsec service which is more or less coincident with Scottish service.

That these two burdens - 'aid' and 'hosting' - did not exhaust the range of forinsec service is clear from the excerpts quoted. We read of forinsec service in aids, in hosting, and in other matters; of aid having to be rendered where the grant is free from hosting and other forinsec services; of common operation, and of forinsec suit ('forinsecis sectis'). Let us consider first the question of 'operatio'. This may be defined as the personal obligation to provide labour in certain circumstances, for example, the building and repairing of bridges and castles. There can be little doubt that some such duty existed as a burden upon all land tenure in early Scotland. Very probably it dated from Celtic times, and, though it cannot now be proved, it is not unreasonable to suppose that it might even have been an integral part of the Scottish service. In support of such a contention, there is the Anglo-Saxon parallel of the 'trinoda necessitas', for it is well known that the duty of 'bric-bot' and 'burh-bot', of repairing bridges and fortifications, was a burden upon the holding of land in pre-Norman England. Annotating the Macbeth grant to the Kele:dei of Loch Leven, Lawrie writes: "It does not appear that the making and mending of bridges was a burden on land in Celtic Scotland,"<sup>1</sup> but this statement he contradicts a few pages later where, in a note on David I.'s charter to Dunfermline, he writes: "It is probable that the liability to repair castles and bridges was laid on all lands in Scotland in early times."<sup>2</sup> Though there is no reference to the practice earlier than the 12th century, that is not conclusive proof that it did not exist before that time.

(1) E.S.C., no. 5, note. (2) Ibid., no. 84, note.



Historical analogy favours the theory, and the language of some 12th century charters seems to suggest that 'common operation', like 'common army', was a continuation of an earlier custom. The phrasing of the charter to Orm (*supra*, (g)) is particularly concise and suggestive, for 'operation' is definitely classed with 'army' and 'aid' as one of the burdens, common to the whole country, which fell outside the grant of immunity. The adjective 'forinsec' is not used to describe them, but it can safely be implied, for services which pertained to the whole country were due to the Crown and were therefore 'forinsec'. The conclusion is inevitable that the secular burden, styled in the charters 'operaciones', was part of the 'servitium forinsecum'.

The allusion in the Brechin Register to 'forinsec suit' (*supra*, (e)) is an isolated one, for nowhere else have we found this use of the term. In the Chartulary of Cambuskenneth, however, there is a mandate from Robert III. against the exaction of 'common suit of court' from the lands of Ketliston which belonged to the Abbey.<sup>1</sup> We naturally hesitate to pronounce dogmatically on the strength of such scanty evidence. Still, a recognised burden on all lands held of the Crown by any tenure other than frankalmoign was the duty of giving 'suit' or court-attendance to the royal courts. And if any land so held were granted to a church in alms, the burden of 'royal suit' would still be due, either from the lay donor or from the ecclesiastical donee. Such 'suit', in the eyes of the donee, would certainly be 'forinsec'. The Crown was the source of justice; grants of jurisdiction and franchise could be made by it alone, and so it is not unreasonable that the adjective 'forinsec' should have been used at times to describe the duty of court-attendance. Nevertheless, we cannot accept 'suit' as having been a recognised part of the 'servitium forinsecum

(1) Cambuskenneth, no. 173.

domini Regis', for, if a subject-superior included in his charter to a tenant the reservation 'Salvo forinseco servitio', he can hardly have meant that his vassal was to give court-suit to the King, when he himself would be invested with full powers of seigniorial jurisdiction.

Have we exhausted the possibilities of the word 'aliis' as used in the clause "Faciendo forinsecum servicium in auxiliis et exercitibus et aliis?" It is not difficult to suggest other secular burdens, but of the list given above on pages four and five, none seems capable of being classed as 'forinsec' unless 'expedition'. In our opinion, this term is not sufficiently differentiated from 'exercitus'. As 'Feacht' and 'Sluaged', Skene defined them as service within and without the kingdom respectively, but, quoting the Brehon Laws, he proceeded to describe 'Sluaged' as "...hosting, viz. going to the wars....and going with the King to make laws or inter-territorial regulations."<sup>1</sup> But much of that is service within the kingdom, and so, according to himself, should be called the 'Feacht'. If we regard 'expeditio' as being merely the old 'Feacht' in feudal garb, it follows that it must have been used to describe personal service with the King, or for the King, within the kingdom, generally of a non-military nature, e.g. judicial visitations, while the 'exercitus' or 'hosting' was the name applied to service in the King's army for foreign war, the repelling of invasions, or the quelling of rebellion. There is, of course, no consistency in the use of these terms by the writers of the time; for occasionally we find 'expeditio' where we should expect to see 'exercitus'. That they connoted two quite distinct ideas, however, is evident from the numerous charters where 'expedition' is named as a burden, separate from 'exercitus'.

(1) Historians of Scotland, IV., p. 454.

We shall accept 'expedition' as a forinsec service, therefore, not because we have found evidence of its being specifically so styled in the charters, or of the epithet 'common' being applied to it, but because it was an obvious development of the Celtic 'Feacht' which was undoubtedly a burden on the land, common to the whole kingdom and exigible by the Crown.

The term 'geldum' is generally used distinct from 'auxilium', and in such cases it must be taken to describe some form of taxation, possibly 'toll', but more generally any money payment, due either to the King or to some mesne lord. But there is one instance where it is used as equivalent to 'auxilium' and therefore in a forinsec sense. In the Register of the Priory of St. Andrews there is a charter from William the Lion confirming to the Hospital of St. Andrews a grant by Simon FitzMichael of a carucate of land, in which occurs this reservation: "*..excepto quod idem hospitale adquietabit illam carucatam terre de Geldo regio quod communiter capietur de terris et de elemosinis per regnum scocie.*"<sup>1</sup> In this context, the payment of 'geld' was certainly a forinsec burden, but this is an abnormal use of the term, and ordinarily it must be held to have fallen outside the scope of the 'servitium forinsecum'.

Taking the adjective 'forinsec' as implying common burdens, based upon the land and exigible by the Crown - which was very probably the connotation generally prevailing in 12th and 13th century Scotland - we may now sum it up as comprehending:-

- (a) The duty of rendering military service in time of national stress, such as foreign invasion or internal rebellion.

(1) St. Andrews, p. 212.

- (b) The duty of accompanying the King or his representative on expeditions within the kingdom on missions connected with jurisdiction, legislation, or general administration.
- (c) The duty of furnishing financial assistance to the Crown when required for special needs, probably connected with military matters.
- (d) The duty of giving personal labour towards maintaining bridges, castles, and probably roads in good repair.

It is generally conceded that forinsec service was a burden essentially related to and assessed upon the land, one of the clearest proofs being supplied by the Scone Register in the well-known grant by Alexander 11. of the lands of Magna and Parva Blar, which contains in the 'reddendo' the clause - "rendering the external service only which pertains to five davachs of land, that pertaining to the sixth davach being remitted."<sup>1</sup> As Cosmo Innes writes: "There are indications that the divisions into davachs, which have hitherto been taken for mere agricultural measures of arable land, have also reference to an early extent, expressed in measure of land, not in money value."<sup>2</sup> In this respect, as we noted above, it was the feudal continuation of the Celtic 'Scottish service'.

Similarly, it will be granted that forinsec service, being a preserve of the Crown, was in all cases of grants by subjects independent of the service stipulated by the donor as due to himself from the donee.. This is borne out by many 'reddendos', particularly in the feudal grants of the period, e.g.

(1) Scone, no. 67. (2) Arbroath, vol. 1, Introd., xxii.



- (a) Charter of land near Cluny in Perthshire by Robert 1., granted "per servitium unius servientis cum hauburgello in equo et faciendo forinsecum servicium quod pertinet ad eandem terram."<sup>1</sup>
- (b) Charter of Larglanfield in Wigtownshire by Robert 1. - "reddendo...ad guerram nostram...unum peditem cum gladio et lancea...et faciendo forinsecum servicium quantum pertinet..."<sup>2</sup>

We need instance no more, for all show the same distinction between the forinsec service which is indefinite, and the feudal service which is clearly defined. But how are we to explain phrases like the following:-

- (a) Robert 1. to James de Cunyngham granting the land of Hassingden - "Faciendo forinsecum servicium dimidii militis."<sup>3</sup>
- (b) Robert 1. to William Barbitonsoris of land in Kirkborthwic, "Faciendo servicium forinsecum quantum pertinet ad decimam partem unius militis in exercitu nostro."<sup>4</sup>
- (c) Confirmation by Alexander 11. to the Abbey of Melrose - "Faciendo forinsecum servitium quantum pertinet ad quartam partem unius militis."<sup>5</sup>

Many other Crown grants will be found, generally in the late 13th and early 14th centuries, where the 'reddendo' clause agrees with the above styles in every respect, save that the word 'forinsec' is omitted. It would seem that, by that time, all services owing to the Crown were occasionally called 'forinsec', especially if they were of a military character. Another possible explanation might well be that, by the 13th century, Scotland had

(1) Haddington MS., p. 68b. (2) Ibid., p. 41b.  
 (3) R.M.S., vol. 1., no. 13. (4) Ibid., no. 21.  
 (5) Melrose, vol. 1., no. 207.

come to be largely divided up into knights' fees after the English model, and that the 'feodum unius militis' had become a recognised unit on which forinsec service might be assessed. And so, the forinsec service which pertained to the tenth part of one knight might conceivably be another way of expressing the service due from a certain extent of land. The point is an interesting one and we shall return to it when we are discussing the relation of the Church fiefs to military service.

It will be convenient and not irrelevant to say something here of the terms 'inwar' and 'utwar' which are to be found in several charters, but only those which refer to lands in the south of Scotland. For example, we read of Robert Hunaud granting to Kelso in feufarm a sixth part of the land of Innerwick, to be held free from all services "et de Inware et de utware."<sup>1</sup> Cosmo Innes concluded that these terms were simply variants of the more familiar 'intrinsic' and 'forinsec' services.<sup>2</sup> The inference is a natural one, and indeed justifiable, for the two phrases are never found in the same charter, and when 'inware' and 'utware' are used, they occur exactly where 'intrinsic' and 'forinsec' are normally found. The style is common in charters of lands in the north of England, and is manifestly of Anglo-Saxon origin.

Vinogradoff, after a brief consideration of the phrase, comes to the same conclusion as Innes - "The Low Latin expression corresponding to 'utwaru' would be 'servicium forinsecum', but whereas this latter in course of time began to be applied to feudal military obligations mainly, the 'utwaru' of earlier times evidently comprised all services due to the king in distinction from what had to be performed for the landlord."<sup>3</sup>

(1) Kelso, vol. 1., no. 249. (2) A.P., vol. 1., p. 12, note 2.  
(3) Eng. Society, etc., p. 192.

This discussion of forinsec service, which we must now bring to a close, is most pertinent to an enquiry into the secular services exigible from the mediaeval Church in Scotland, for in charter after charter recording grants of land to bishopric or abbey we shall find the term mentioned. The necessity for the above analysis of the significance and content of forinsec service is self-evident.

.....

E. The Evidence of the Chartularies relating to the Liability of the Church to Secular Service.

In the following pages we shall treat each secular burden separately by collating from all available sources the evidence concerning it. We shall have to quote extensively from the Chartularies, which, after all, are our prime authorities for an investigation of this kind. There will of necessity be some slight repetition of some of the facts mentioned above, but it is difficult to see what other method would secure the same lucidity.

1. Military Service:-

In examining the liability of the Church to military service, we must draw a distinction between the ordinary service of 'hosting' and the national levy summoned for the defence of the country. Both of these were, of course, normal aspects of the

King's forinsec service, and, as such, were clearly marked off from the feudal levy, raised by knight service. The normal grant to the Church 'in elemosina' carried with it exemption from 'hosting', i.e. from service within the kingdom for the suppression of rebellion and the maintenance of order, and service outside the kingdom, when incursions were made into the enemy's territory. How far, however, service for national defence was covered by the grant of immunity is a debateable point. The best modern opinion is that the duty of defending the kingdom was always a fundamental, and exigible from elemosynary fiefs, no matter how highly privileged the tenure might be. The reservation 'salva defensione regni mei' will be found in the following charters:-

- (a) David I. to Dunfermline Abbey, confirming the grants of his predecessors and adding lands and privileges. (c.1128)<sup>1</sup>
- (b) David I.'s foundation charter to Cambuskenneth. (1147)<sup>2</sup>
- (c) General confirmation by William the Lion of the possessions of the Abbey of Arbroath. (1211-14)<sup>3</sup>
- (d) Agreement between Arbroath and David of Manuel regarding the land of Dunnechtyn - "Tam ipse (i.e. David) quam homines sui contribuent in auxiliis regni et defensione regni sicut alii vicini qui de abbate tenent per scriptum." (1315)<sup>4</sup>
- (e) Charter by Alexander II. to Holyrood of his land in Kalentyr. (1234)<sup>5</sup>
- (f) Charter by Robert de Brus to Melrose,<sup>6</sup> confirming immunities "Nullum forinsecum servicium sive exercitum...de dictis terris Elemosinatis in posterum capiemus....nisi quando communis

(1) E.S.C., no. 74. (2) Ibid., no. 179.

(3) Arbroath, vol. 1., no. 1. (4) Ibid., no. 339.

(6) Melrose, vol. 1., no. 351.

(5) Holyrood, no. 65.





exercitus totius Regni levatur propter ipsius Regni defensionem." (1301)

(g) Confirmation by Robert I. of the charter of Malcolm IV. to the Abbey of Scone. (1326)<sup>1</sup>

From a consideration of the above, the question naturally arises: Are we justified in assuming from its reservation in a few charters that the duty of military service in defence of the kingdom was a burden upon all Church lands, whether held in frankalmoign or not? The examples given show that, even as early as the reign of David I., the possessions of Dunfermline and Cambuskenneth were so burdened. But if we examine the foundation charters of, or early confirmations to, such as Melrose, Scone, Kelso, Glasgow, or Moray, we shall find no such saving clause. If the duty of national defence were a general burden, why is it stipulated in some charters and not in others? It is this lack of consistency which creates most of the problems for the student.

It is in a difficulty of this nature that a charter like (f) above is of very great value. In that particular deed, the Abbey concerned is Melrose, and, prior to 1301, the date of Bruce's charter, no document containing the reservation 'salva defensione regni' or words to that effect is to be found among the 'munimenta' of the Abbey. And yet Bruce announces that no forinsec service or 'hosting' of any kind will be exacted from the 'elemosinas' of the Abbey within the Earldom of Carrick, unless when a common levy of the whole people is raised on account of the defence of the kingdom itself. Here then is the proof that we require that the duty of national defence could be exacted from the lands of the Church, even where there was no specific reservation of the service in the charters of enfeoffment.

(1) Scone, no. 129.

It should be mentioned, however, that in these two cases (Dunfermline and Cambuskenneth) where David I. includes the saving clause, there is no mention of 'elemosina' in the grant. The King states that the Abbeyes will hold their lands as freely and quietly as he possesses his own. But William's grants to Arbroath are to be held in free and perpetual alms, and despite the fact that the Abbey was his own foundation and one which he lavishly endowed, the reservation is included. Again, the charter of Alexander II. to Holyrood, referred to above, is one which records a grant in feufarm and not in frankalmoign. The fact that the reservation appears in relatively few charters makes any conclusion largely a matter of conjecture. Still, our opinion must remain that which is given above on the authority of the Bruce charter, and that which Dowden expresses thus: "The soundest opinion seems to be that tenants in frankalmoign were freed from all secular exactions and service, except probably what services arose under the 'trinoda necessitas', or the obligation to join a general levy to resist foreign invasion."

It will not be out of place to refer to a document which gives the 15th century attitude to this question of Church lands and national defence. In the Moray Register there is an interesting proclamation by James II., dated 1445, to "all his lieges and subjects," which is couched in the following terms:-

"Wit ye that be ony letteris of ours giffyn to ony man it is nocht...our entent to do harm or prejudice to a reverend fadir in Crist, John, bischop of Murreff na to his kirk in ony maner, bot ever...to manten and defende thaim in al rychtis, freidomis and privilegis pertenyng tham, and to al and sindry landis ar haldyn allanerly of us in cheff. Quharfor we forbed stratly

al and sindry our forsad ligis and specyaly our well belovit cos-  
 :yngis the Erle of Murreff and Huntle that throw ony letteris  
 giffyn to tham or ony of tham or to be giffyn twechyng the defence  
 of the cuntre that thai nothir compell na distrene ony man inhab-  
 :itant the landis of the forsad kyrk be oppyn proclamation or ony  
 odir maner of compulsion or have ony jurisdiction in thaim to cum  
 to thaim for wappinschawyng or pass with tham to gadryng or hostyng  
 for we wil that quhat tyme that the common defence of the cuntre  
 apperis to be considerit be the sade reverende fadir and his succ-  
 :essoris with his chapter that al and sindre the men inhabitant his  
 forsad kyrk landis at the commandment of our letteris to be direk-  
 :tit to him tharapon that he mak al his forsade men be redy ryss  
 and pass with his awyn baleis that sal be for the tyme to the  
 common defence of the cuntre redyly lik as oderis baronys men of  
 our realme sal do quhen nede apperis at the commandment of our sade  
 letteris to be direkyt as is forsad to hym or his successoris thar-  
 :apon and thus til endur til hym his successoris and his kyrk for  
 evir." /

This document shows well how jealously the Church  
 clung to its privileges. It was prepared to discharge its oblig-  
 :ation of helping in the defence of the country, but it was anxious  
 that its tenants should go out on the King's service under its own  
 leaders or bailies, and not under the control of neighbouring  
 barons or their bailies. We shall have occasion to comment on  
 other illustrations of this Church jealousy of lay interference  
 when we are considering further charters.

The other aspect of military service must now engage  
 our attention, viz. what is usually called 'exercitus' or sometimes  
 'communis exercitus'. It is generally agreed that the ordinary



grant in frankalmoign, no matter how baldly or how fully worded, freed the Church landholder from this burden of 'hosting', unless there were in the charter some definite reservation to the contrary. Clauses stating this exemption are not difficult to find. They are usually couched in such terms as - "Tenendam...liberam et quietam de omni exercitu," or, as in Fergus's grant to Lindores of the land of Fedal - "Et eam faciemus liberam de exercitu et auxilio et de omni servicio;"<sup>1</sup> or, as Robert, Earl of Strathearn, promises to the same Abbey - "facere exercitum domini Regis pro terra de Eglesmagril in perpetuum."<sup>2</sup> One thing is clear: the land as granted to the Church by a subject-superior was burdened with the full forinsec service, and it was a matter for private bargaining between the Church and its benefactors to decide on whom the incidence of that service lay. In the numerous cases where there is no distinct agreement as to who is to discharge the burden of 'hosting' and the other forinsec services - where, for example, the donor does not state that he and his heirs will respond for all the services pertaining to the grant - the onus must be held to have been sustained by the benefactor. No other conclusion is possible even where the language of the 'tenendum' clause is limited to the bare 'in elemosinam', or where this is qualified by the phrase - 'free from all service and secular exaction'.

Charters where the duty of military service is excepted from the general immunity conveyed are naturally of greater interest for us than the above, for it was long held that the piety of David I., his successors, and their subjects, had freed the Church from all secular service. No doubt, the conditions of ecclesiastical land tenure in 12th century Scotland were much more highly privileged than corresponding conditions in

(1) Lindores, no. 24. (2) Ibid., no. 44.



contemporary England. In the latter country, for the purposes of military service, Church fiefs were assessed on the same principle as secular. In Scotland, the truth with regard to the liability of the Church to military service would seem to lie intermediate between the state of complete immunity, as envisaged by many historians, and that of systematic and detailed 'servitia debita' such as were owed by the great English sees and monasteries. We must, therefore, examine closely the evidence which shows the Scottish Church to have been liable to such services.

Consider the following charters:-

- (a) A confirmation by David 1. in 1147 of the grant to Coldingham by Gospatric of Ederham and Nesbit. It was to be held free of all service and custom except an annual payment of 30/- and service in the King's army, when the monks were to attend on the King. Gospatric was declared to be quit for ever of the duty of 'hosting' in respect of these lands. Though this is not an eleemosynary grant, it is instructive in so far as it shows that, even before the death of David, all Church lands were not necessarily freed from the normal forinsec services in the King's 'host'.<sup>1</sup>
- (b) Another of David's charters illustrates the same practice. About the year 1150 he granted to Andrew, Bishop of Caithness, the land of Hoctor Comon, to be held free from all service except 'communi exercitu'. This term must be taken to cover the full duties of 'hosting', not merely the general levy for national defence. Note again the absence of the word 'elemosina'.<sup>2</sup>
- (c) In the Glasgow Register, however, we find an early elemos-

(1) E.S.C., no. 178. (2) E.S.C., no. 221.

ynary grant burdened with the full obligation of 'hosting', when Malcolm IV. granted to Bishop Engelrand the land of Conclud in perpetual alms, 'salvis exercitibus meis'.<sup>1</sup> As Dowden remarks<sup>2</sup> in connection with this donation, there were special reasons why the King should have been more generous, for we learn from the charter that Conclud was granted to compensate for Malcolm's transgression against the Church, in bestowing certain lands without sufficiently securing the Church in its dues. Nevertheless the reservation is included, and in it Dowden reads a change in the royal attitude towards the great clerical landholders - a change in the direction of a more restricted immunity.

(d) A growing determination can be noted on the part of the Crown not to cripple itself unduly by surrendering to the Church the royal right of demanding attendance at the 'hostings'. Though the great bulk of Church land continued to be free from the ordinary forinsec army service, there was a tendency, especially in the 13th century, to except that service from the immunity granted. For example, in 1236, Alexander II. gave to Moray three davachs of land in Fynlarg, to be held in free and perpetual alms, with the reservation - "Faciendo forinsecum servicium in exercitu quod pertinet ad dictas tres davachas."<sup>3</sup>

(e) In the Register of Arbroath there is an informative document bearing on this aspect of secular service, which runs as follows: "Anno 1250...apud Forfar, Robert de Monte alto, William de Ramsay.....dixerunt quod viderunt Nicholam de Inverpefir sequentem curiam abbatis de Abirbrothoc pro terra sua de Inverpefir et quod de eadem terra annuam firmam dicto abbati reddere consuevit et quod exercitum et auxilium facere solebat cum hominibus dicti abbatis preterquam in exercitu quem dominus Rex...

(1) Glasgow, vol. 1., no. 15. (2) Mediaeval Church, p. 156.  
(3) Moray, no. 37.

ultimo habuit cum eo in ergadia sub anno domini 1248 et tunc idem Nicholas misit homines suos in exercitum cum hominibus domini Regis de ballia de forfar, propter quoddam placitum in quo abbas de Abirbrothoc traxit ipsum coram iudicibus delegatis de terra sua de Inverpefir metuens quod idem abbas de terra prefata ipsum voluit exheredare et per hoc intendebat idem Nicholas habere dominum Regem defensorem suum contra prefatum <sup>ab</sup>abbem in causa memorata.."'

This document concerns a controversy between the Abbey of Arbroath and a certain Nicholas of Inverpeffer. The latter held his land in feu of the Abbey, gave suit of court to the Abbot, paid an annual rent to him, and responded with the other tenants of the Abbey for the forinsec duties of 'hosting' and 'aid'. In 1248, however, when Alexander 11. had led a military expedition into Argyle, Nicholas had placed his men with those of the bailliary of Forfar instead of with the men of the Abbot. Nicholas's defence was that he feared that the Abbot was going to deprive him of his land, and that he had intended to enlist the support of the King on his behalf. Apart from the general historical interest of the document, the fact is clear that the duty of supplying men for the King's army for service other than the defence of the country had rested with the Abbey of Arbroath.

(f) From the Register of Dunfermline we obtain another instructive charter which shows the agreement come to between the Abbey and one of its tenants, William, son of Ingeram, who was to hold from the Abbey, in fee and heritage, the land of Pontekyn, "liberam de omni servitute et querela que ad dictam terram pertinent preter ea que ad regiam coronam sunt pertinentia...Concedimus etiam ei et heredibus suis libertatem remanendi ab excercitibus domini Regis nisi ita communis sit excercitus quod homihes de



Inveresc et de Munketun domi non possint remanere et tunc unum solummodo hominem inveniet.." <sup>1</sup>

Here we find the privilege of remaining from the armies of the King granted by the Abbey to a tenant, who was thus freed from the burden of forinsec service 'in exercitu'. Notice, however the distinction drawn between 'exercitus' and 'communis exercitus', for the exemption granted to William does not cover the latter contingency, although the extent of his obligation is limited to the finding of one man only. Both terms pertain, of course, to the King's forinsec service, and neither can in any way be called a feudal levy; but 'common army', in this case at least, must be held to signify a general levy of the whole kingdom, summoned in times of acute emergency, whereas the single word 'exercitus' describes the ordinary service due, when required, as part of the forinsec obligation. The concession "unum solummodo hominem inveniet" is interesting in that it sheds some light upon phrases like - "Faciendo forinsecum servicium unius militis", suggesting as it does that the forinsec burden was not always vaguely expressed as - "quantum pertinet ad dictam terram." It must be remembered that what is, in our eyes, a vague and indefinite expression, must have conveyed a definite idea to the landlords and tenants of the time. The number of men required from this land of Pontekyn in fulfilment of the forinsec obligation must have been well known to the Abbey of Dunfermline, who, while thus reducing it in respect of this particular tenant, would probably have to make up the deficiency from some other source, for with the King alone lay the power to decrease the military service (i.e. the number of men) returnable from any fief.

(g) There is a charter of a similar nature in the Register of

(1) Dunfermline, no. 301.



Kelso, wherein a certain Hugh Crawford and Alice his wife make it known that they have received from Henry, Abbot of Kelso, a letter under the seal of the Chapter, stating that he (Hugh) was in possession of the land of Draffane, returning annually to Kelso two and a half marks of silver, "et faciendo nobis homagium et fidelitatem et sectam ad curiam nostram et inveniundo unum hominem et dimidium in forinseco servicio.." (1271)'

The expression 'one and a half men' is intelligible only if we remember that payments in lieu of military service were a recognised practice in Scotland as well as in England. In this case, Hugh either sends one man and pays half the maintenance of another, or possibly compounds for the whole service in money.

(h) In the reign of William the Lion, Robert de Line granted to the bishopric of Glasgow his land of Scrogges, to be held freely and quietly in perpetuity. The arrangement laid down as to the rendering of forinsec service is of great interest:- "Ille (i.e. Bishop Walter's tenant) autem qui de episcopo terram illam tenuerit mecum ibit super equum suum ad forinseca regis servicia facienda. Et ego quamdiu mecum erit ei et equo suo omnia necessaria inveniam; et si equus suus in servicio meo mortuus fuerit ego ei alium reddam; et si ille qui terram illam tenuerit mecum ire non potuerit, alium mei loco suo inveniet."<sup>2</sup> From this we learn that the expense of maintaining his man when out on the royal service rested with Robert de Line, even to the extent of replacing the tenant's horse, if it should die in his service. Note the term 'in servicio meo', for the service was forinsec, and therefore the King's. This must mean that Robert would answer in person for the forinsec service due from his land, i.e. that all the men riding forth on the King's service would be under his command. They were serving the King by serving under Robert, and

(1) Kelso, vol. 2., no. 474. (2) Glasgow, vol. 1., no. 87.

thus a clerk might well write 'faciendo forinsecum servicium domini A' (i.e. any subject-superior), instead of the usual 'domini Regis', for the two expressions would convey the same meaning. (Cf. supra, pp. 38-39)

(i) Consider next a charter from the Melrose Register which records a grant in free, pure, and perpetual alms, by William de Alwentun of the land in Halsington, which he held of Robert de Muscampo. No service was stipulated in return - "Nisi orationum suffragia, excepto quod dicti monachi facient pro ipsa terra domino feodi vicesimam partem servicii unius militis cum commune servicium exigetur per totum regnum Scocie.." <sup>1</sup>

A natural question would be - What is meant by 'commune servicium'? Is it military or is it financial, i.e. 'army' or 'aid'? In so far as the word 'service' is usually used to describe any burden discharged in person, we may take it that here we have a reference to a general levy of men, rather than to a general levy of money. Nevertheless, the service which the monks are required to make to 'the lord of the fee' is obviously a financial one, for no other interpretation can be taken from such an expression as 'vicesimam partem servicii unius militis'. These words must mean the service which pertained to the twentieth part of a knight's fee, or in other words, the twentieth part of the expense required to maintain one soldier in the field. As noted above in connection with the Kelso charter, this points to a form of scutage, operative where fractions of knights or knights' fees were concerned. Another feature worthy of notice is that this service, insignificant as it is, is to be made to the lord of the fee, in this case, Robert de Muscampo. This does not mean that the demand for 'common service' originated from him, but simply that Robert

(1) Melrose, vol. 1., no. 330.

was answerable to the Crown for the common or forinsec services <sup>in</sup> pertaining to this territory, and so all contributions, personal and financial alike, would have to be made to him. This is an exact parallel to the service required by Robert de Line from the tenant of the bishopric of Glasgow.

(j) Further evidence is supplied by the well-known statute of the year 1220,<sup>1</sup> where there is a record of the penalties due from those on the lands of "bishops, abbots, barons, knights, and thanes," who remained at home and failed to attend the army of the King when he was "in hosting against Donald Nelson." The 'iudices' (i.e. dempsters or doomsters) of Scotland met at Perth to consider the penalties incurred by those "qui ab exercitu defuerunt." As Macphail indicates, "neither the penalties nor their application have any relation to feudal ideas, but obviously depend on the old Celtic law imposing the obligation of military service which the defaulters had failed to observe."<sup>2</sup> This memorandum, together with the allusion to Alexander 11.'s military expedition to Argyle (supra, (e)), shows that 'exercitus' or 'hosting', which Skene considered to be the same as the Gaelic 'Sluaged', was applied to service within the kingdom, and was not limited to external or foreign warfare.

(k) Just as we adduced a proclamation by James 11. to illustrate a previous point, so may we now include a few 16th century documents as shedding some light in retrospect upon earlier practice. In the Register of Moray there will be found records of 16th century tacks of lands, made by the bishops to laymen, in which express reference is made to the burden of military service. For example:-

a. "Obleissment be ane honorable man Johne Graunt of Balnad-

(1) A.P., vol. 1., p. 398.

(2) Highland Papers, vol. 2., p. 234.



:allacht fewair of the lands of Adweye, Calatar, Rurory, etc., to be lele, true and faithfull to the Bischop of Murraye...and to serve the Bischop in the Kingis weris be him or his subtenentis of the said landis.." (1540)<sup>1</sup>

b. Charter of feufarm made by the Bishop to James Innes and Katherine Gordon his wife of the lands of Ardwait, Muirtoun, etc., "Faciendo servitia consueta in guerris seu exercitiis regis sub Episcopo, propriis expensis.." (1566)<sup>2</sup>

c. A third runs thus - "Faciendo servitia ad guerras cum Episcopo vel ejus ballivo, sumptibus propriis, in armis, indumentis, rebus bellicis, et aliis necessariis ad hoc congruentibus sufficienter et honeste...secundum consuetudinem patriae et decreta parliamenti et statuta Regni." (1546)<sup>3</sup>

The significant words in these deeds are 'servitia consueta in guerris', and 'servitia ad guerras...secundum consuetudinem patriae'. The burden of military service is thus no new one, but one handed down through the centuries as a well-recognised custom. The allusion to Parliamentary decrees and statutes as <sup>ni</sup>defining this service makes us long for some such document which would explain the position of the early Church with regard to military service.

Another point to notice is that, though the Church might hold land in free and pure alms, completely exempt from all secular service, the immunity might, with its permission, be temporarily suspended in a case of emergency. The following example will illustrate the practice so far as military duties were concerned, while other aspects will be noted below:-

A proclamation from Malise, Earl of Strathearn to the

(1) Moray, no. 309. (2) Ibid., no. 316. (3) Ibid., no. 361.



effect that, although 'the monks of our monastery of Inchaffray rendered succour to me with their men for maintaining the peace of the kingdom after the death of Alexander III., I desire that because of this act of courtesy, done as a special favour, no prejudice shall be created as regards the obligations of the monks, nor shall their act be drawn into custom, inasmuch as by the infertment granted by my ancestors, Earls of Strathearn, the monks were wholly free from exactions of this kind.'<sup>1</sup> It is evident that the Abbey had supplied Earl Malise with some force drawn from the tenants of the Abbey lands. We should bear in mind, however, that the monastery of Inchaffray had been founded by the family of Strathearn, and that the relations between the monks and the Earls must generally have been cordial. Nevertheless, the charter furnishes additional proof of the jealous maintenance by the Church of its rights of exemption from secular service.

In justification of the Church's attitude in this question, it should be pointed out that many attempts were made from time to time by feudal superiors to disregard the liberties conferred by grants in frankalmoign. To illustrate this, we may quote from a Bull of Innocent IV. of the year 1251. Entitled "De gravaminibus ecclesie Scotice emendandis," it proceeds:-

"Et super possessionibus quoque seu rebus quas in jus divinum pia contulit largitas devotorum, clerici per regia trahuntur edicta contra cleri privilegium ad iudicium seculare nec audiuntur ius publicum allegantes, sicque per iudicis incompetentis injuriam non nunquam ecclesie suis possessionibus spoliuntur. Et preterea cum aliquibus possessionibus ecclesiis in elemosinam a laycis perpetuam donatis in quibus nihil sibi preter exercitum ad defensionem regni et commune auxilium retinent donatores, iidem

(1) Inchaffray, no. 117.

ministri et alii layci eorum favore suffulti per adjectionem hujusmodi predictas possessiones laicantes fore censentes eas in omnibus paris conditionis efficiunt cum possessionibus laycorum.."<sup>1</sup>

From this it will be seen that one of the evils which the Pope sought to redress was that grants to the Church in perpetual alms, in which the grantors retained nothing except 'exercitum ad defensionem regni et commune auxilium' were treated as if they were ordinary fiefs in the hands of laymen.

All the land held by the mediaeval Scottish Church was not necessarily held in frankalmoign. Although the great majority of their holdings were eleemosynary, there was always a fair number held by the ordinary conditions of feudal tenure, e.g. where the grants were made 'in feodo' or 'in feodifirmam'. In such cases the clerical landlords were liable to all the usual feudal burdens, including the duty of 'hosting'. Two examples will suffice:-

(a) A grant by Alexander II. to the bishopric of Moray of the land of Kynmyly, to be held "ad feodam firmam in perpetuum... Reddendo annuatim decem libras...et faciendo forinsecum servicium in exercitu et auxiliis et aliis.." <sup>2</sup>

(b) A grant by Robert I. to Dunfermline of some land in Berwick, to be held in fee and heritage..."Reddendo...firmas burgi de predictis terris et burgagiis debitas et consuetas et faciendo servicia debita et consueta de eisdem." <sup>3</sup>

It was open to the King, if he thought fit, to free a particular fief altogether of its forinsec service. It was a privilege which he alone could confer. Subjects usually did exempt their ecclesiastical donees from the forinsec burden, but

(1) Moray, no. 260. (2) Ibid., no. 34. (3) Dunf., no. 356.

had in that case to shoulder it themselves. As a royal service, the King alone could free land from its incidence, and sometimes we find that separate charters of immunity were granted after the bestowal of the land, which, as originally granted, had been liable to the usual services. For example:-

- (a) In 1227, Alexander 11. 'quitclaimed' to the monks of Coldingham the 'auxilium et exercitum' which they had been accustomed to give from the twelve 'villas' of Coldingham parish.<sup>1</sup>
- (b) In the same year, Alexander 11. 'quitclaimed' to the Hospital of St. Nicholas at St. Andrews the army, aid, and other forinsec service due to him from a certain ploughgate which they held.<sup>2</sup>
- (c) William the Lion granted to the Priory of May that "omnes terre eorum et omnes homines eorum in terris ipsorum manentes sint liberi et quieti de exercitu et expeditione."<sup>3</sup>

From these and other charters, it is clear that we cannot take the terms of the original grant as necessarily governing the conditions of tenure for so long as the lands might be held by the donee. Charters must always have been liable to revision either in the way of creating immunities or of restricting or cancelling them.

This question of the military service owed by the clerical landholders, and indeed by the secular as well, is none too clearly defined in the deeds of the time. We read, for example, of defence of the kingdom, of common army, of forinsec army service, and of army by itself. It is well that we should be clear on the

(1) Coldingham Charters, no. 66. (2) Reg. Hse. Transcripts.  
(3) Charters of May, no. 16.



point, for it is an important one.

Much of the obscurity will be swept aside, if we remember the fundamental distinction between military service, performed as part of the normal feudal obligation, and military service, performed as part of the forinsec burden. Into the latter category all the above varying expressions may be put. They denote a service due as part of a burden exigible from the whole country, and not merely from those who hold lands by military service. When Malcolm IV. includes the clause 'Salvis exercitibus meis' in his grant of Conclud to Glasgow, he means simply that the forinsec service 'in exercitu' must be rendered when required, and certainly not that so many knights have to be sent yearly to the royal army to serve for the statutory forty days. When William the Lion ends his confirmation to Arbroath with the words 'Salva defensione regni mei', he does not mean that the monks or their men must respond to every call for forinsec army service, but only when that service is to be directed towards the defending of the country. Thus a grant of land made 'salva defensione' and one conferred 'salvo forinseco servitio in exercitu' have practically the same meaning, the only difference being that the first is more highly privileged than the second.

We must remember also that the word 'common' admits of a double interpretation. It may imply a service taken from the whole country at the same time, or a service exacted from a certain district only, by virtue of the fact that such service is a liability of the whole country. In both cases, of course, the duty is a forinsec one. We incline to the view that, whereas the term 'forinsec army' may well cover both practices, the term 'common army' denoted rather the army raised from the whole land at the same time. Take for example the following 'reddendo' - "Tres



denarios tantummodo pro quolibet Regis auxilio seu exercitu quotiens dominus Rex communem exercitum vel commune auxilium exigere contigerit a toto suo regno."<sup>1</sup>

The main difficulty arises when the word 'exercitus' alone is mentioned. Dowden accepts it as connoting the ordinary feudal service of supplying so many men to the King's host to serve for the statutory period of forty days in the year.<sup>2</sup> In this he is obviously correct; but when he goes on to say that Scottish holders in frankalmoign were freed from this burden, he would seem to be confusing forinsec army service with feudal army service. He should have said rather that Scottish eleemosinars were normally exempt from the burden of forinsec service 'in exercitu', for there was no need to exempt them from the 'forty days per year' feudal service, for the simple reason that no-one owed the latter service save those who held their lands by specific military tenure, i.e. by the service of so many knights. Corroboration of this view will be found in contemporary English practice. Leaving mercenary troops out of the reckoning, we see there the same two sources from which armies might be raised, viz. fyrd-service and knight-service, and of the latter alone was the definite period of forty days predicated.

It seems also, from the nature of the term, that the word 'host' is more applicable to the forinsec levy from the people than to the feudal levy raised by knight-service. The term 'hosting' suggests a gathering of the community, and so when Dowden applies it to the feudal levy of 'milites', we have difficulty in accepting his conclusion. The man who joined the King's host in fulfilment of the forinsec obligation did not serve for any defined period, but for as long as the occasion demanded. The essence of

(1) Inchaffray, no. 100. (2) Med. Church in Scotland, p. 157.

forinsec service 'in exercitu' was that it was quite indefinite, and exigible only when the emergency arose. The characteristic feature of feudal knight-service was that it was fixed - defined by the charter of enfeoffment as the service of so many knights - and due to be rendered each year for the recognised period. The confusion as to the translation of 'exercitus' and as to the meaning of 'hosting' arises from the fact that in most campaigns or military expeditions, the King's army would comprise both men raised through the forinsec obligation and knights discharging the 'servitia debita' of the military tenants of the Crown.

With regard to Church liability to military service, therefore, we may conclude as follows:-

- (a) That the duty of joining a general levy of the whole country in defence of the kingdom was imposed upon all elemosynary fiefs, notwithstanding grants of immunity and privilege.
- (b) That this duty was one of great antiquity and was very probably exacted even in the reign of David I., and almost certainly by his successors.
- (c) That the ordinary forinsec service 'in exercitu' was not exigible from tenants in frankalmoign, unless there were definite reservation to the contrary, and that was the exception rather than the rule.
- (d) That, as regards 'elemosinas' held in chief, though a slight tendency is noticeable to restrict exemptions from forinsec army service, especially in the 13th century, the conditions of tenure still remained highly privileged.
- (e) That, where the grant was from a subject-superior, there was, in the great majority of cases, no question of the forinsec army service being lost to the Crown, for it was generally

undertaken by the grantors.

Many other minor conclusions could be put down, but, since to do so would entail the repetition of much that has already been said in the last twenty pages, we have not included them here. The question of the 'salvo servitio meo' clause, nearly always found in royal confirmations after the reigns of David and Malcolm, and sometimes also in confirmations by subject-superiors, we shall reserve until later, for it obviously concerns other secular services as well as military.

.....

## 2. 'Expedition':-

The consideration of this aspect of secular service need not detain us long, for the Chartularies contain little from which we may supplement what has been said above (pp. 45-6) about 'expeditio' in relation to forinsec service. It will be remembered that we decided to include it within the scope of the latter term on the strength of the fact that it represented the 12th century continuation of the Celtic 'Feacht'. In the charters it is invariably mentioned with 'exercitus', which suggests that the two burdens were closely associated, as indeed they had been in Celtic Scotland.

In one or two charters we find the word 'equitatus' where normally we should expect to see 'expeditio'. For example, in a grant to Arbroath by Richard de Mallvele of ten acres in the plain of Kynblathmont to be held in perpetual alms, the 'tenendum'

clause is worded - ".libere ab omni servicio regis et exercitu et equitatu et ab omni exactione seculari."<sup>1</sup> Or again, in the Whitby Chartulary, we find William de Percy granting lands to the Abbey, and promising to defend and acquit them "ab omni equitatu et forensi servitio..<sup>2</sup> If we take 'equitatus' fairly literally as meaning a 'riding-out' on the King's service, some light is thrown on the commoner word 'expeditio'.

The classification in the Rath charter to Arbroath (infra, p. 72) is especially significant and suggestive. Like 'exercitus', 'expeditio' was an obligation to travel on the King's service, but was differentiated from the former by the fact that the visitations were on missions of peace and not of war. There is no actual proof from contemporary records for this conjecture, but it seems the most reasonable distinction between the two. If, as in the following case, 'expeditio' is found to signify a military mission, it may be taken as an exception which, while naturally obscuring the issue, does not disprove the hypothesis formulated above:-

A grant by Alan Fitz-Rolland, the Constable, to Alan de Rose of the land of Ferinsley...."Tenendam sibi...in feodo et hereditate adeo libere...sicut aliquis qui per servitium haubergelli liberius ...in tota terra nostra de nobis tenet....Salvis nobis...nostris cerais (sic) et billis, inveniando nobis....in expeditione exercitus nostri unum juvenem cum haubergello..."<sup>3</sup>

Here we do not find 'expeditio' used in contrast to, or separate from 'exercitus', but in its wide, general sense. One thing would seem to be beyond all doubt, viz. that 'expeditio' in its narrower sense, as used in the great majority of charters, was limited to service within the kingdom.

(1) Arbroath, vol. 1., no. 304. (2) Whitby, vol. 1., no. 26.  
(3) Register House Transcripts.



With regard to the lands of the Church and their liability to this service of 'expeditio', the conclusions advanced above for military service again apply.

.....

### 3. 'Auxilia':-

Let us first be clear as to the exact meaning of this term. It is obviously a feudal word, and is not to be found in the earlier charters, i.e. of the first half of the 12th century. It is not mentioned in the 'Early Scottish Charters' where the equivalents are usually such general terms as 'exactions', 'customs', etc. We need not repeat, however, what we have already said on page 42, where we distinguished between 'commune auxilium' and the ordinary feudal 'aid'. The former was essentially a forinsec service, due to the Crown when required; the latter denoted the conventional feudal payments made by tenants to their superiors. It is doubtful how far the English connotation of the term 'aid' as covering the payment by military tenants of 'knighthood', 'marriage', and 'ransom', obtained in Scotland. The safest conclusion would be that the word as found in the immunity or 'reddendo' clauses of numerous Scottish charters to religious houses implied rather any money payment made by a tenant to his lord. In many cases it must be held to include miscellaneous financial burdens like tallages, scutages, reliefs, escheats, etc., whereas in others it is stipulated as a separate prestation. Compare, for example, the following two charters:-

- (a) Grant to Arbroath by William, son of Bernard, of the land of Rath, to be held free from all army and expedition, aids and gelds, operations and wards, pleas and complaints, customs,

services, and secular exactions. (c.1206)<sup>1</sup>

- (b) Grant by Alexander, Bishop of Aberdeen, to William Irwyn of the land of Dulmaoch, etc., to be held for an annual rent of 46/8.... "cum wardis, relevis, maritagis, finibus et escaetis, auxiliis et operationibus et omni alio seculari servitio." (1331)<sup>2</sup>

The grouping in the first of these suggests a classification of the secular service under four main heads, viz. personal service with the King (army and expedition), financial payments (aids and gelds), personal labour or service (operation and wards), and judicial services (pleas and complaints). The rest of the clause - "from customs, services, and secular exactions" - is mere redundancy and conventional style. As here used, the term 'auxilium' is obviously a generic expression for financial exaction of any kind. The second charter supplies the normal feudal use of the word, where it has the narrower connotation of a particular 'incident'.

Let us consider, first, eleemosynary grants with reference to the forinsec burden of 'commune auxilium':-

- (a) Grant by Robert, Earl of Strathearn, to Inchaffray of the land of Rath.... "Tenendum quiete ab omni servicio... solummodo auxilio domini regis quando scilicet dominus rex commune auxilium super totum regnum posuerit.." (1223)<sup>3</sup>
- (b) Grant to Inchaffray by Bricius of Ardrossane of land in Petlandy which he held in feufarm of Luke, son of Theobald... "Reddendo (i.e. to Luke) tres denarios tantummodo pro quolibet Regis auxilio... quotiens dominus Rex... commune auxilium exigere contigerit a toto suo regno." (1271)<sup>4</sup>

(1) Arbroath, vol. 1., no. 67. (2) Aberdeen, vol. 1., p. 52.  
 (3) Inchaffray, no. 52. (4) Ibid., no. 100.

- (c) Grant by Turpin, Bishop of Brechin, to Arbroath of a toft and croft in Stracathro, to be held free from all exaction - "preter commune auxilium Regis." (1178-98)<sup>1</sup>
- (d) Grant by Alexander 11. to Arbroath of the land of Tarves to be held in free alms - "Faciendo forinsecum servitium in exercitu....De communi autem auxilio...eos in perpetuum quietos clamavimus." (1234)<sup>2</sup>
- (e) Grant to Arbroath by Robert Warnebald and Richenda his wife of his land in Fordun, to be held in free and perpetual alms "Salvo forinseco domini regis in exercitu et communi auxilio de quibus dicti monachi respondebunt." (1238)<sup>3</sup>
- (f) William the Lion's confirmation to the Hospital of St. Andrews where there is the reference to the 'royal geld' - "quod communiter capietur de terris et de elemosinis per regnum scocie." <sup>4</sup>

We have confined ourselves above to grants made to the Church, but from a charter by Robert 1. to James, Lord of Douglas, in 1324, we learn something more about this 'common aid'. The grant is stated to be free from all suits of court, castle-guard, tallages, etc., "Salvo tamen communi auxilio pro defensione regni nostri contingente."<sup>5</sup> It does not necessarily follow that the defence of the country was the only occasion on which such an 'aid' could be levied on the whole people. Nevertheless, this use of the word suggests an obvious relationship with 'common army'; that the payment of 'common aid' might well be normally required for the maintenance of the 'common army'. Maitland mentions a phrase used in English charters which is a possible parallel: "We read too of payments for the provision of knights and of an 'auxilium exercitus' the aid for a military expedition. In Normandy the equivalent for

(1) Arbroath, 1., no. 75. (2) Ibid., no. 102. (3) Ibid., no. 261.

(4) St. And., p. 212. (5) Douglas Book, 3., p. 11, no. 14.



our scutage is generally known as the 'auxilium exercitus'."

As a forinsec service, 'common aid' was a burden indissolubly linked to the land; but the ordinary grant in frankalmoign conveyed immunity from the payment, unless it were expressly reserved in the donor's charter, as in (a), (c), and (e) above. Alexander 11's grant to Arbroath (*supra*, (d)) shows well that the forinsec burden might be split, exemption being granted in respect of one aspect of it while the rest had to be carried out. If any doubt remained as to whether lands held in frankalmoign were subject normally to the exaction of 'common aid', it would disappear after a consideration of (f) above, where there is a clear-cut distinction between 'terris' and 'elemosinis', i.e. between lands held by the ordinary feudal tenures and lands held by the Church in frankalmoign. The charter informs us further that 'royal geld' (i.e. simply 'aid') was commonly taken from the latter as well as from the former. The adverb 'communiter' is especially helpful, for it naturally suggests that the practice of levying this 'geld' upon Church 'elemosinas' was not an innovation of William's reign, but one with its roots in the past.

With regard to 'auxilium' in its non-forinsec sense, there is no lack of charter evidence. In the great majority of cases, the grantor makes his gift entirely free of this burden, either by the insertion of the simple 'liberam ab auxiliis' phrase in the 'tenendum' clause, or by a declaration that he himself will answer for the burden. We need not quote here excerpts to illustrate these styles, but rather select for consideration only those which contain some special feature bearing on the question under review.

A charter by Malcolm IV. to the Abbey of Scone affords



additional proof of the conclusion advanced above that the payment of royal aid was a service exigible from all Church lands, whether 'elemosinas' or otherwise. In this charter,<sup>1</sup> Malcolm announces that he has granted to the Abbot of Scone the right of collecting 'aids' by his own agents or bailies, wherefore he forbids the sheriffs of Forfar and Scone to enter the Abbey lands for this purpose. Though the 'aid' is not called 'forinsec' or 'common', it was an obvious payment to the Crown, and as such, could well be so styled.

Sometimes the immunity from this exaction was made the subject of a separate charter, as for example, Alexander 11.'s concession to Arbroath, granted in 1230: "Mandamus...quatenus Abbatem de Aberbrothoc nullatenus vexetis exigendo a terris suis auxilium de quibus usque in hodiernum diem dare non consuevit."<sup>2</sup> Sometimes, also, the grant of immunity took the form of a 'quit-claim', as in the same King's concessions to the monks of Coldingham and to the Hospital of St. Nicholas of St. Andrews. (supra, p. 66)

In the Arbroath Register there is the following interesting document which is particularly instructive:

"Sciatis quod G. Abbas et monachi de Abirbrothoc ad petitionem nostram nobis liberaliter concesserunt ut homines sui in toftis suis manentes que habent in burgis nostris auxilium faciant cum burgensibus nostris ad coria pro nobis adquietanda que vendidimus in anglia in magna necessitate nostra quum profecti fuimus usque doveram. Et volumus ut auxilium quod hac vice nobis liberaliter concesserunt de predictis hominibus suis contra libertatem quam dominus rex pater meus eis dedit per cartam suam non trahatur

(1) Scone, no. 17. (2) Arbroath, vol. 1., no. 109.

alias in exemplum vel consuetudinem." (1215-19)'

From this we learn that the Abbot and monks of Arbroath had, at Alexander's request, granted him an 'aid' because of the King's great need at the time of his journey right to the south of England. Alexander makes it known that this payment, which was counter to his father William's exemption, shall not be held as a precedent. This proves beyond dispute that the immunity from secular service conferred by the grant in frankalmoign was by no means rigid, though only some exceptional circumstance could justify its suspension. Note also that the assistance given here by the Abbey tenants was the result of a royal petition or request, and not of a command.

It is useful to compare this incident in the light of the charters and confirmations granted by William and Alexander 11. to Arbroath. The founder's confirmation, granted towards the close of his reign, runs as follows: "Omnia autem dona predicta ita liberaliter et quiete prefate ecclesie concedo....defensione regni mei excepta et regali iusticia," while an earlier charter announced that all tofts granted by William should be free from all 'aids and operations'. The confirmations by both William and his son contain the reservation 'salvo servicio meo', thereby ensuring that the service pertaining to the lands granted by subjects shall not be lost. On this occasion of the expedition to Dover, therefore, it would seem that tribute was twice exacted from these Abbey lands, viz. from clerical donees and lay donors alike, for the latter could hardly have escaped the payment when the King, 'ex magna necessitate sua', was forced to rely on the generosity of the Church. The conclusion must be that in times of national stress or great royal need, assistance might be sought from the Church as well as from

the lay tenants of the Crown. It is difficult to imagine a point-blank refusal on the part of the former, protected though they might be by the conditions of their tenure. The normal course would be for them to make the payment desired, and then to seek from the King a charter to confirm their immunity in respect of that which had been temporarily suspended.

A parallel to this case may be found in the Register of Melrose, where there is a charter from William the Lion confirming the indemnity of the Cistercian order.<sup>1</sup> The date is a little after 1189, and it appears that the monks of Melrose had helped towards the paying of the sum to Richard I. 'pro remedia regni libertate'. The historical setting will be remembered: William had at Falaise in 1174 surrendered to Henry II. the independence of his Scottish kingdom, and fifteen years later, on the accession of Richard, had redeemed it for a payment of 10,000 marks. Hence the need for money, and no doubt 'commune auxilium' was levied on the whole country, to which the great Church tenants in frankalmoign must have been asked to contribute. Melrose can hardly have been the only religious house to assist, but no parallel reference has been found in the other chartularies. In the charter under review, William promises that this financial help, voluntarily contributed, will not be taken as a precedent for future exactions.

The well-known dispute between the Abbey of Paisley and Gilbert, son of Samuel, in 1233, over the land of Monachkennaran may be adduced to illustrate this question of the Church and 'aid' payment. We need not reproduce the details of the controversy. Suffice it to say that the Abbey representatives sought to prove that the land in question had belonged to them ever since the foundation of the monastery. They therefore produced a number of

(1) Melrose, vol. 1., no. 16.



witnesses who testified to that effect. By some it was stated that the men inhabiting these lands had always been protected by the Church, and in the court of the Abbey against all others. One Anekol, while corroborating this testimony, added that Earl David, brother of King William, when he held the Earldom of Lennox, had tried to raise an 'aid' ('habere auxilium') from these churchlands of Kilpatrick just as from the other lands of the Earldom, but that he had failed because these lands were defended by the Church. Apart from its interest as an early example of court-procedure in Scotland, the case is instructive in so far as it illustrates, first, the Church's jealous guardianship of its privileges, and secondly, Earl David's failure to exact service from the Abbey lands. /

Clearly then, though Alexander II. might manage to extract some money from the Church lands for his English journey, and William for his treaty with Richard, it by no means follows that other feudal lords would have the same success. We do not know the object of Earl David's attempted imposition; it probably sprang from a desire to ignore eleemosynary privileges and to treat Church fiefs and lay fiefs alike as a source of revenue.

The fact that secular lords in many cases were ready to ignore the immunities of their ecclesiastical tenants is further illustrated by the Bull from Innocent IV. in 1251 (*supra*, p. 64) wherein the practice of treating lands held in frankalmoign as ordinary feudal fiefs is condemned as an evil to be eradicated. In many cases, the great barons, carried away at the time of the grant by the example of their sovereign and fellow barons, or actuated by fear for their spiritual welfare, must have lived to regret their lavish endowment of churches and monasteries,



diminishing as it did their worldly wealth. We can well understand therefore, that some, anxious to retrieve their position, would attempt to override the privileges granted by their own charters, or even dispute the possession of the land in an endeavour to regain it.

A good example of this practice, probably not uncommon, is furnished by the Register of Melrose. Towards the close of the 12th century, William de Hunum built a chapel on his lands of Rasawe and gave the whole to Melrose to be held in free, pure, and perpetual alms.<sup>1</sup> Later, however, he repented of his gift and made a violent effort to resume it. The controversy which arose was settled in 1208 by the said William being allowed to enjoy the land during his life, on condition that it should become the property of the monks in perpetuity after his death. In 1225, however, he once again resigned the land to the monks on the conditions of the original grant.

A mandate from David 11. in the year 1369 shows that the privileges of the Church with regard to this aspect of secular service were maintained beyond what may be called the feudal age. The sheriffs and their bailies of Perth were notified that the land of Kintulach in their bailliary had been granted to Cambuskenneth Abbey in pure and perpetual alms, and they were therefore forbidden to levy contributions upon the inhabitants of these lands or to compel them to perform any other services other than such as were rendered by the possessors of other eleemosynary lands within their bailliary.<sup>2</sup>

Let us now put down the conclusions reached above:-

(1) Melrose, vol. 1., nos. 131, 133, and 277.

(2) Cambuskenneth, no. 180.

- (a) Church lands held in frankalmoign were free from all 'aid' payment, forinsec or ordinary, unless the service were expressly reserved in the charter conveying the grant, and that was the exception rather than the rule.
- (b) An important exception was the 'royal' or 'common aid' as levied in times of emergency, generally in the same circumstances as would lead to the summoning of the 'common army', i.e. for purposes of home defence.
- (c) An urgent request arising from a contingency other than the above might lead to the temporary suspension of this immunity, especially if this request came from the King.
- (d) Church lands held by a tenure other than frankalmoign ( a relatively small fraction of the whole) were liable to the full secular service of 'aid' payment.

.....

#### 4. 'Operaciones':-

This burden we decided to classify as a forinsec service on the strength of the fact that it was one to which the adjective 'common' could be prefixed. We defined it as the duty, owed by all tenants, of maintaining in proper repair bridges, roads, castles, and fortifications generally. The most convincing proof of its forinsec nature was the analogy of the Anglo-Saxon 'trinoda necessitas' and the charter of William the Lion in which it was definitely classed with 'common army' and 'common aid' as a

burden reserved where all other service had been remitted. A distinction must be noted, however, with regard to the meaning of the word 'common' as applied to 'operacio' as contrasted with the other two services. In the case of 'army' and 'aid' it implies an obligation, common to the whole country, which is imposed on the whole country at the same time. In the case of 'operacio', it can imply only the first of these two characteristics, for never can the royal decree have gone forth to the effect that all landholders and their tenants throughout the length and breadth of Scotland must proceed to the repairing of bridges, castles, etc. From the nature of the case, 'operation' was a service which could be exacted only when the necessity arose in any particular district.

The charter references are neither particularly numerous nor helpful. We have brought together, however, those which seemed to elucidate the question a little.

First, we might mention again the gift of Macbeth and Gruoch his queen to the Keledei of Loch Leven of the land of Kirkness.<sup>1</sup> Spurious or not, in it we find the interesting concession 'sine refectione pontis'. Even if this were a 12th century draft of an earlier grant, it does suggest (if it cannot prove) that the duty of providing labour for such purposes was known in pre-feudal Scotland. Lawrie himself, it will be remembered, was in two minds on the question.

About 1130, David I. granted to Dunfermline Abbey a short charter entitled 'De libertate castellorum et poncium' which runs as follows: "Sciatis me dedisse.....ut homines sui sint liberi ab omni operatione castellorum et poncium et omnium aliorum operum.." Here we have a definite grant of immunity in respect of this service of 'operation'. Note also the words 'omnium aliorum

(1) Vide supra, p. 43.

operum' which suggest that castle and bridge repair did not exhaust the range of 'operation'.<sup>1</sup> We suggested above that the making and mending of roads was probably included in the scope of the service, and there seems no reason to doubt the presumption.

This charter raises a question which could well have been discussed above with reference to 'army' and 'aid', viz. why was this separate charter granted for the purpose of conveying an exemption from a service which had never in any previous charter been reserved or stipulated in any way. It seems superfluous - this granting of something already given. One may carefully analyse the first two charters in the Dunfermline Register - confirmations by David I. of the grants of his predecessors with the addition of new lands and privileges - only to find that all lands and possessions of the Abbey were to be held freely and quietly, 'sicut ego terras meas proprias possideo'. The only reservation was the duty of national defence and the right of appeal from the Abbot's court. All other secular service was remitted. These confirmations were given about 1128 and two years later came the separate grant of exemption from the duty of bridge and castle repair.

This and the parallel case mentioned above (p. 77) of William's separate charter to Arbroath conferring freedom from 'aids and operation' when that freedom had already been implied, if not expressly stated, raise the whole question of the wording of the 'tenendum' clause in charters. When we find a charter granting lands to be held freely and quietly without any secular service, followed by one granting some specific immunity, a pardonable inference would be that the general exemption of the first charter did not cover the service specified in the second. But to accept

(1) Dunfermline, no. 31.



such a hypothesis would be to shatter the validity of 'tenendum' clauses in all charters. If we cannot accept a charter which states an exemption, no matter how generally worded, as conveying freedom from particular services, the futility of investigation on the subject is obvious. By far the most likely explanation of such seeming contradictions is that, between the grant of the first charter and that of the second, some trouble had arisen from some questioning of the monks' liability to the service in question, and possibly from some attempts to exact it, which made desirable some fresh pronouncement on the matter. Hence the separate royal charter, confirming and making more definite that privilege which, from the vagueness of the original grant, had in the interim been called in question or in some way jeopardised.

A later charter by William the Lion to Dunfermline bears upon the same subject of labour-services. Entitled '*Quieta clamacio operum*', it proceeds: "*Sciatis quod quando feci castella mea in Ros, homines abbatis et monachorum de Dunfermelyn ad petitionem meam de bona voluntate sua operati fuerunt cum aliis probis hominibus meis ad eadem castella firmanda. Quare volo et praecipio quatinus hoc quod illa vice ad petitionem meam inde fecerunt, non trahatur in exemplum quare aliud in posterum in talibus facere debeant...*"<sup>1</sup> William's confirmation of the Abbey's lands and possessions had repeated his grandfather's concession with regard to work on castles and bridges. In this case, however, we learn that the monks had at William's request permitted their tenants to assist the King in the building of his castle in Ros. This gracious relinquishing of their undoubted right of freedom from such work was followed by this quitclaim stating that this action would not be taken as a precedent for the future. The analogy with William's bargain with Melrose, Alexander 11.'s with Arbroath, and

(1) Dunfermline, no. 54.

the Earl of Strathearn's with Inchaffray is complete. In each case a request for help, military in the last instance and financial in the first two, was granted by the monks despite written evidence of immunity, and in each case a charter of explanation and confirmation followed the infraction.

The only other reference to the service under the full name - 'operacio castellorum et pontium', so far as we have found, occurs in the Newbattle Register in the general confirmation by Alexander II. of the possessions of the Knights of St. John at Torphichen.<sup>1</sup> There we have the exemption stated as above. Other allusions are not infrequent, but they supply no further information for practically all are couched in such general terms as - "liberam ab omni exercitu et expeditione et auxilio et operatione et omni seculari exactione."

We might mention here Lawrie's remark with regard to David's charter to Dunfermline, considered above. Commenting on the grant of immunity from work on bridges and castles, etc., he says that similar exemptions were rare. In so far as the full phrase 'castellorum et pontium' is concerned, he is right; but he must surely have seen that the simple word 'opus' or 'operatio' covered the same idea. And though not numerous, examples of the latter styles are not difficult to find. Does he mean, further, that, where the exemption is not fully specified as in the Dunfermline charter, it does not exist? That lands, though held in free and pure alms and quit of all secular service, must be considered to have been burdened with this obligation, unless the clause 'liberam de operatione castellorum et pontium' appeared in their charters? Surely not. We should say rather that all lands held by the Church in frankalmoign of the Crown were quite free from

(1) Neubottle, no. 222.

this burden; and similarly lands held in alms of a subject were, so far as the Church was concerned, also exempt, for such services were normally discharged by the lay donors. The whole question of the language of the mediaeval charter to a clerical beneficiary and of the legal validity of the privileges conveyed will best be considered after this analysis of the particular services.

.....

#### 5. Ordinary Financial Burdens:-

In this general category the following various payments may be grouped:

- |             |                   |             |
|-------------|-------------------|-------------|
| (a) Multure | (b) Toll          | (c) Tallage |
| (d) Scutage | (e) Marriage      | (f) Ward    |
| (g) Relief  | (h) Escheat, etc. |             |

Of these, the first two are easily the most important. The rest might well be classed together as ordinary feudal burdens, and indeed would be practically irrelevant to our subject were it not for the fact that they make fugitive appearances in the 'reddendo' clauses of charters to the Church.

#### (a) Multure:-

This may be defined as the payment exacted by the lord for the privilege of having one's corn ground at his mill. Cosmo Innes called it "one of the most grievous oppressions of the peasantry," while elsewhere he wrote: "In the very earliest of these



charters (i.e. in the Kelso Register) there are grants concerning mills...and their curiously minute regulations of precedence at the mill, and payment of multures, prove the early ingenuity with which this piece of feudal oppression was enforced against all but the privileged."<sup>1</sup> The grant 'cum molendino' was a valuable one and jealously guarded by the average lay landholder who usually made it a penal offence for any of his tenants to grind their own corn in secret. It must have been a most unwelcome duty for the lord's tenants to carry their grain to the miller, who, in Scotland as well as in England, was usually notorious for his 'thumb of gold'.

In view of these conditions, the right frequently granted to monasteries to be free from payment of 'multure' must have been a privilege not to be despised. The great majority of the charter references to mills and mill-dues are of the nature of exemptions, as for example:-

- (a) Grant by Hugo de Moreville to Dryburgh of half a ploughgate in Newtoun, to be held in free and perpetual alms, free "de omnibus consuetudinibus, de multura et seculari servitio."<sup>2</sup>  
(c.1150) This is one of the earliest allusions to the burden.
- (b) Donation to Kelso by Cecilia de Molle, daughter of Eschina, .."Tenebunt dicti monachi.....quieta et soluta ab omni servicio et servitute et exactione et ab omnimoda consuetudine et ab omni onere et gravamine et erunt quieti a multura." (1200-02)<sup>3</sup>

In the latter instance, the 'tenendum' clause has been given fairly fully to show that 'multura' alone is specifically mentioned after a declaration of exemption from all service expressed in sweeping terms. The importance of the multure payment might be deduced from this fact.

(1) Sketches of Early Scotch History, p. 193.

(2) E.S.C., no. 216. (3) Kelso, vol. 1., no. 148.



Other examples will be found where the exemption is usually expressed simply 'liberam a multura' or 'a molendino', but in a grant by Walter Fitz-Alan to Melrose of land in Aldeneston, the immunity is phrased - "Cum libertate molendini ad molendinum meum sine aliqua multura."<sup>1</sup> Again, in a charter to Culross by Reginald de Waren granting thirty acres of land in Gilgerhistun, it runs as follows - "Free from the charge of multure and they shall have the right to grind their corn immediately after harvest before anyone else.." (c.1231).<sup>2</sup>

Very rare are the instances where the paying of multure is reserved as a burden to be discharged by the clerical landholder. The following example will suffice to show that the exemption was not always granted. In a donation to the Priory of St. Andrews by Roger Wyrfauch of land in Cuneveth to be held in free, pure, and perpetual alms, there occurs this reservation: "Salvo forinseco servicio domini Regis, videlicet quantum pertinet ad dimidiam davacham et salva multura de illa terra qua pertinet ad molendinum de Coneveth.." <sup>3</sup>

Very interesting also in this connection is the charter, already referred to, by Robert de Line to the Bishopric of Glasgow. In this document he conveys the land of Scrogges to be held freely in perpetuity for an annual 'reddendo' of twelve pence, after which he continues: "Et homines in terra illa manentes venient ad molendinum meum; domus ac Episcopi vel eius cui ipse terram illam assignaverit quiescit a multura, sed homines sui dabunt multuram. Et similiter ipsi homines venient ad operacionem molendini.." <sup>4</sup>

The state of affairs indicated in this charter may well describe the conditions obtaining in other of the eleemosynary lands

(1) Melrose, vol. 1., no. 81. (2) Culross Charters (Proc. S. A.)  
 (3) St. Andrews, p. 335. (4) Glasgow, vol. 1., no. 87.

of the Church as a whole. The men dwelling on the lands, i.e. the tenants of the Church are here required to come to Robert's mill as before, the multure-payments being thus secured to the donor. But the house of the Bishop or of him to whom the Bishop may assign the land will be free from the burden, though his men must give both payment and labour at the mill like the other tenants of the fief. Very probably where the monks or clergy held a tract of land in full demesne, i.e. where they cultivated it themselves, the multure-payment was remitted; but where they held it merely as the feudal superiors of tenants who farmed the land, the latter had to make the payment as before. It would appear that mills were not included in the ordinary grants to the Church, unless the charter contained the phrase 'cum molendino'. At times too, we read of a mill as the subject of a grant by itself, as for example when Richenda, widow of Robert Warnebald, gave to Arbroath the mill of Coneveth, to be held "*cum tota multura totius parochie de konueth et cum omnibus aliis ad dictum molendinum iuste pertinentibus.*"<sup>1</sup> This same mill was shortly afterwards given by the Abbot to John Wishart to be held in feufarm for ten pounds annually,<sup>2</sup> in which case the right of exacting mill-dues passed to the new holder. Here then is the owner of the mill to whom the monks of St. Andrews had to pay multure by virtue of the gift of land in Cuneveth from Roger Wyrfauch. (supra, p. 88) We must remember, therefore, that when a man made a grant in alms to the Church, it does not follow that the mill pertaining to the land in question was his to grant, and so it did not always lie in his power to concede freedom from multure.

.....

(1) Arbroath, vol. 1., no. 264. (2) Ibid., no. 271.

(b) Toll:-

This may be defined as a financial burden exacted from goods or merchandise of any sort passing through the land. It was roughly equivalent to the modern customs-duty. In mediaeval times the word had various meanings; thus, it is defined by Glanvill as the liberty of buying and selling in one's own land: "Tol, quod nos vocamus theloneum, scilicet libertatem emendi et vendendi in terra sua." It also signified the right to be free from toll. It formed the most obvious source of revenue in the early burghs; goods coming to market or passing through the burgh paid toll. Private lords also levied toll, but these in no case were levied theoretically at pleasure, for the right to exact toll depended upon a royal grant. Tolls in kind may have been frequent, for among the sins of Chaucer's Miller was that he could 'tollen thryes' in that he was rogue enough to subtract thrice the legal allowance from the corn he ground. With regard to the word as found commonly in the charters, Cosmo Innes preferred "the interpretation which makes thol - the definite, technical privilege - the right of exacting the duty rather than the right of refusing to pay it."<sup>1</sup>

In our examination of the Scottish Chartularies, we have found no charter specifically conferring the right to exact toll. There are, of course, several examples where it appears in the conventional feudal phrase - "Tenendum cum sacca et socco et toll et team et Infangandthef", as for instance:-

- a. David I.'s confirmation to Coldingham in 1126 of the lands of Coldingham, Reston, Ayton, etc.<sup>2</sup>
- b. Alexander II.'s general confirmation to the Knights Hospitallers in 1231.<sup>3</sup>

(1) Legal Antiquities, p. 56. (2) E.S.C., no. 65.

(3) Neubottle, no. 222.



- (c) Foundation charter by Malcolm, Earl of Fife, to Culross Abbey in 1217.<sup>1</sup>

The phrase became no doubt a mere style conveying a grant of feudal jurisdiction, but we must take it that, in the three cases given, and in others where it appears, there was conferred the privilege of levying this toll or custom upon merchandise passing through the lands of the church. That it signified the positive right of levying and not the negative one of escaping, is very clear from the Newbattle charter mentioned above, where, in addition to the grant 'cum toll et team' there occurs the exemption "Volumus....ut quieti sint ab omni toloneo et ab omnibus aliis consuetudinibus in omnibus empcionibus et vendicionibus."

We are more concerned, however, with the question of clerical liability to pay, than privilege to impose toll. In no charter have we found any definite reservation to the effect that Church landholders must pay this duty. Most charters are silent on the point, in which case the exemption must be inferred from the general grant of immunity from secular service. Those which do mention toll expressly are all grants of freedom from the necessity of paying it. For example:-

- a. David 1.'s charter to Holyrood.<sup>2</sup>
- b. David 1.'s grant to the monks of May. ('quieti de cano et tolneio per totam terram meam')<sup>3</sup>
- c. David 1.'s grant to St. Andrews.<sup>4</sup> ('free from toll both within and without the King's burghs, with leave to buy grain and flour in any way they like for their own use')
- d. David 1.'s confirmation of grants to Dryburgh.<sup>5</sup>
- e. William the Lion's charter to Melrose<sup>6</sup> that it be free from

(1) Culross Charters. (2) E.S.C., no. 153.

(3) Charters of May, no. 6. (4) E.S.C., no. 168.

(5) E.S.C., no. 243. (6) Melrose, vol. 1., no. 17.



toll and from the customs of merchants.

- f. Alexander 11.'s confirmation of the liberties of the monks of Arbroath. ('De exempcione a theloneo')<sup>1</sup>
- g. Alexander 11.'s grant to the monks of Cupar that they shall be free from all toll passage and other customs throughout the land.<sup>2</sup>
- h. Alexander 11.'s grant to Balmerino.<sup>3</sup>

This is a fairly comprehensive list and supports the conclusion that goods from the lands of the Church were normally exempt from the payment of toll-duty within the kingdom. It might be asked how far these royal grants conveyed immunity from payment of toll to a subject who held his lands 'cum toll et team, etc.' The language of David's charter to May might be held to mean that the royal concession held good only for the royal demesne lands and burghs. It all hinges upon the interpretation given to 'per totam terram meam'. It is more probable, however, that the immunity was complete, and covered the whole kingdom - an inference which is supported by Alexander 11.'s grants to Arbroath and Cupar.

A much later document of the year 1495 shows how zealously the Church had clung to its privileges in this matter. In that year, a citation by James IV. of the bailies and community of Renfrew for wrongfully taking customs from the town of Paisley, runs as follows:-

"To....our schireffis in that parte...Our will is...that ye peremptourly summond...the bailyeis of the burgh of Renfrew, and the comunitie of the samyn burgh...to compeyr before us and our counsale at Edinburgh...to answer at the instance of a venerabile faider in God, George, abbot of Paslay and convent of the samyn for the wrangwis takyn and intromitting with the custumez within the

(1) Arbroath, vol. 1., no. 108. (2) Cupar, vol. 2., p. 282.  
(3) Balmerino, no. 1.

regalite and barony of Paslay, and for the wrangwis detention and withaldyng fra the saidis Abbot and convent of the saidis custumez.. quhilk custum pertenyys to the saidis Abbot and convent and thar predicessoris and thai ar infeft tharof and exempit fra all custum.. pertenyng to the said burgh....and als the costis, scaithtis, dampnage, expensis, and interes that the saidis Abbot and convent has sustenit in the defalt of the saidis baillies...and thar pred- :ecessoris....and als for the wrangwys fischeing and setting of nettis in thar watty and landis of the Bernis liand within our schirefdome of Dunbertane...." <sup>1</sup>

From this we see that the bailies of Renfrew had been taking toll from the burgh of Paisley, contrary to the tenour of the Abbey's charters given of old. We have exemplified the double aspect of toll, viz. the right to exact it, and the privilege of not paying it. The right to take toll from the town of Paisley rested with the Abbey, while the monks were further exempt from the payment <sup>of</sup> all toll and custom within the barony of Paisley.

.....

(c) Tallage:-

This is purely a feudal term and one rarely seen in charters dealing with the lands of the Church. In England, it meant a special tax paid by cities, boroughs, and royal demesnes. Authorisation from the Crown was necessary before the barons could enjoy the right of 'tallaging' their own demesnes. It may be presumed that a similar usage prevailed in contemporary Scotland.

One of the very few pronouncements on this subject occurs in a charter by Alexander 11. to Arbroath in 1230. Addressing his sheriffs and bailies of Scotland, he orders them to respect the liberty of the monks with regard to the payment of tallage and aid.<sup>1</sup> The occasion of this confirming of the monastic immunities was the Abbey's voluntary contribution towards the expense of the King's Dover expedition, mentioned above in connection with 'aids'.

Two other references in the Register of Balmerino show that the payment of tallage was not normally a burden on Church fiefs. In 1231, Alexander 11. granted to the Abbey the land of Cultrach and Balmerino in free, pure, and perpetual alms, free - "ab auxiliis, exercitibus, talliagiis, tolloneis..."<sup>2</sup> The other, a confirmation by Henry de Candela of his father's grant of land in Anstruther is to the same effect.<sup>3</sup> There is no evidence that the payment of tallage was ever reserved in an elemosynary grant.

.....

(d) Scutage, Relief, Marriage, Ward, and Escheat:-

No useful purpose would be served by considering these separately. All are the normal feudal incidents attaching to tenure 'in feodo et hereditate', although 'ward' has a double significance in the charters. An example of the conventional usage may be quoted from the Register of Aberdeen, where we learn that in 1331 Alexander the Bishop granted to William Irwyn certain lands in fee, for a 'reddendo' of "quadraginta sex solidos...cum wardis, relevis, maritagis, finibus et escaetis, auxiliis, et operation-

(1) Arbroath, vol. 1., no. 110. (2) Balmerino, no. 1.  
(3) Ibid., no. 49.

:ibus et omni alio seculari servitio."<sup>1</sup>

Without defining the terms, we may say at once that, as conventional feudal financial burdens, they fall outside the scope of our subject, for no Church or monastery holding in frankalmoign could be called upon to render the service. If, however, the Church should happen to hold land 'in fee and heritage', it is conceivable that, of the above burdens, scutage might on occasion be required. It will be remembered that in a grant to Melrose, the twentieth part of the service of one knight had been specified.<sup>2</sup> As said above, this points to a system of scutage, for the twentieth part must have signified an exact sum. On this occasion, however, the grant was an eleemosynary one, expressed in the fullest terms, and not one in fee and heritage. The service stipulated can hardly have been scutage, i.e. a commutation for military service, but was more probably a mere symbol of dependence, so trifling as to amount to 'blench' holding.

From the nature of their position, 'maritagium' (cf. the old 'merchet') and 'ward' (meaning the control of an estate during the minority of the tenant) can never have been exigible from Church landholders. Similarly, the 'relief' could not be exacted from them, for land donated to the Church was given to a particular church or abbey, and not to the bishop or the abbot as individuals; and as the church or abbey never died, no 'relief' could ever be taken. In Church tenure, the juristic doctrine of 'ficta persona' held good; the land had passed into the 'dead hand' ('in manum mortuam'). 'Escheat' need not detain us, for, as signifying the full forfeiture of the real and personal estate of the traitor, the felon, etc., it has no bearing on the question of Church lands.

(1) Aberdeen, vol. 1., p. 52. (2) Melrose, vol. 1., no. 330.



'Ward' as used in the sense of castle-guard is more relevant to our purpose. In later Scottish charters, the term came to be more or less coextensive with military service. Writing of the feudal grant in fee and heritage, Mackinnon says: "It involved service ('servitium') particularly, but not exclusively military service, or ward as it was termed in Scotland."<sup>1</sup> From the charters of the 12th and 13th centuries, however, it does not appear that 'ward' had this significance. Rather would it seem to imply some form of guardianship, generally of castles, e.g. William the Lion's confirmation in 1166 of his grandfather's charter to Bruce of the land of Annandale, where we have the reddendo: "Per servitium decem militum, excepta custodia castellorum meorum unde ipsum quietum clamavi."<sup>2</sup>

The following charter, already referred to, illustrates well the fact that 'ward', so interpreted, might conceivably have been exigible from the lands of clerical landholders:-

A grant by William, son of Bernard, to Arbroath, c. 1206, of land in Katerlyn, to be held in pure and perpetual alms, free "ab omni exercitu et expeditione, et ab omnibus auxiliis et geldis, et ab omnibus operacionibus et Wardis, et ab omnibus placitis et querelis.." <sup>3</sup>

In this case, 'ward' is used quite apart from its usual feudal context, and must be held to signify some personal service analogous to 'operation' with which it is classed. It is difficult to see what service it can have connoted other than that of supplying a guard of some sort when required by the feudal superior. One thing is certain, viz. that, as used in this Arbroath charter, it does not denote a financial burden. The evidence is far too

(1) Const. History, p. 87. (2) Nat. MSS., vol. 1., no. 39.  
(3) Arbroath, vol. 1., no. 67.

meagre for anyone to dogmatise on the point, but we should be fairly safe in inferring that ward-service was never due from clerics, though the tenants of their 'elemosinas' might well on occasion have to respond for the service to the lord of the fee, i.e. the superior from whom the Church held.

.....

6. Burdens payable in Kind:-

Under this heading we shall consider these three -

(a) Can

(b) Conveth

(c) Corody

(a) Can:-

As explained above, the word 'can' denoted a delivery of produce, animals, poultry, etc., given as part of the rent by tenants, or of the dues by vassals to their superiors. An old Celtic burden, the word makes fugitive appearances in the charters of the period. With the progress of feudalism, however, the word 'reddendo' or 'redditus' (i.e. rent) becomes the usual name for payments due from tenant to superior, whether in money or in kind.

Examples of the old Celtic terminology can easily be found. For example, we read of David I. granting to the church of St. Kentigern of Glasgow the tithe of his 'can' of beasts and pigs from Kyle, Carrick, etc.<sup>1</sup>; of David granting to the monks of May freedom from 'can' for their ship;<sup>2</sup> of William, Bishop of St. Andrews, confirming to Dryburgh their land of Innergelly - "Salvis

(1) E.S.C., no. 125.

(2) Ibid., no. 167.

nobis....antiquo cano debito de eadem terra et secta.." <sup>1</sup> This last example incidentally proves that Skene was wrong in considering that 'can' was a burden only upon Crown lands, and that Lawrie was right in assuming it to have been common to all.

When 'can' appears in its feudal guise as 'redditus', we find rents derivable from various sources besides lands, e.g. fishings, hunting rights, mills and burghs. Several instances of such may be found in the Scone Register, e.g. Malcolm IV.'s grant of one tenth of his rent <sup>of corn</sup> <sub>^</sub> from certain specified lands; <sup>2</sup> Alexander II.'s grant of territory for an annual-rent of forty chalders of good corn and sixty of good beer; <sup>3</sup> Malcolm IV. gives twenty shillings of his rent from the burgh of Perth, and ten shillings of the rent of his mills there; <sup>4</sup> William the Lion grants one tenth of his fishings in the Tay. <sup>5</sup>

In those many charters where there is no reference to 'can' by name, or to any 'reddendo' in kind, it may be assumed that it was understood as being covered by such general terms as 'consuetudo' or 'exactio', and that it was not normally exigible from lands held in frankalmoign, unless expressly reserved, and that is a rare enough occurrence. A 'reddendo' of money or produce from lands held by the Church in feufarm is quite another matter, for such was the normal prestation attaching to that form of feudal tenure.

(b) Conveth:- According to Lawrie, 'conveth' differs from 'can' in that it was a duty paid only to ecclesiastical superiors. It is doubtful if this is entirely

(1) Dryburgh, no. 290. (2) Scone, p. 10. (3) Ibid., p. 46.  
 (4) Ibid., p. 11. (5) Ibid., p. 17.



true, though certainly we never hear, for example, of the King's 'conveth' as we often do of the King's 'can'. As the duty of supplying food, shelter, and entertainment to the lord when on his travels, it has affinities with the ecclesiastical 'procuration' and the feudal 'purveyance'.

There is not much in the Chartularies from which to illustrate the point. One reference in the Register of St. Andrews would seem to furnish support for the Lawrie standpoint. We read there that Roger the Bishop granted to the Priory the land of Duff Cupar, to be held free "a Can et Cuneveth et exercitu et auxiliis..!" This could be interpreted that, in naming 'conveth', the Bishop was surrendering a payment due to himself; but, on the other hand, the wording of the clause by no means proves it. The truth would seem to be that 'conveth' could quite easily be due to a churchman, not as a right solely pertaining to the Church, but due to him as to any other superior, clerical or lay, throughout the country.

More interesting is the following agreement between the see of St. Andrews and the Abbey of Arbroath concerning the lands of Fyvie, Tarves, Inverbondie, etc., and the rents and conveths due from them:-

"Ita inter eos amicabiliter convenit quod idem episcopus concessit et quietas clamavit eis pro se et successoribus in perpetuum memoratas terras cum omnibus pertinenciis suis, redditibus et conevetis....salvo sibi....antiquo reddito de Monedin, scilicet tribus solidis et sex denariis et porcione coneveti quam solebat facere apud Bencorin..."<sup>2</sup>

From this we see that the obligation to provide what supplies might be necessary has come to be fixed as a certain amount

(1) St. Andrews, p. 45. (2) Arbroath, vol. 1., no. 169.



of produce, no doubt in proportion to the extent of land held. The 'antiquo reddito' referred to is simply the old 'can' under a new name, and it has here been commuted to an annual rent of three shillings and sixpence.

Another charter of c. 1251 gives the old Celtic names for the chief secular services. It records a grant by Eugenius, son of Duncan of Erregeithill, to the bishopric of Argyle of certain lands in the west, to be held in free, pure, and perpetual alms, free of all secular exaction and demand, from can, conveth, feacht, sluaged, etc.<sup>1</sup> Here we have the real Celtic use of the term 'conveth', viz. a burden, normally due from the lands to the donor Eugenius, but one which he has graciously remitted.

(c) Corody:- As used in Scotland, this term would seem to have had a different signification from its usual English meaning. According to Holdsworth, "It was a grant, usually by a religious house to some person, of clothing, board, and lodging for a fixed period."<sup>2</sup> Snape follows this definition on the whole and adds: "In the case of monasteries of royal foundation, except where the house was held in frankalmoign, the King had the right to demand a corrody for one of his servants: and even where this obligation was not due, the royal influence was frequently strong enough to ensure the grant, coupled perhaps with an acknowledgment on the King's part that the concession was of favour and not of right. Every founder of a monastery also had the right to demand a corrody for one of his kinsmen, or any other whom he chose to appoint."<sup>3</sup>

In the Scottish charters, the term is used as more or

(1) Reg. Hse. Transcripts. (2) English Law, vol. 3., p. 152.  
(3) Eng. Monastic Finances, pp. 139-140.

less as equivalent to 'conveth'. One of the best examples is contained in David I.'s confirmation of Gospatric's grant of Ederham and Nesbit to Coldingham. There we read that the lands will be free from all service and custom except the payment of thirty shillings by the monks to the son of Gospatric and his heirs 'pro conredio regis' annually at Martinmas, and except service in the King's army.<sup>1</sup> In his note on 'conredio' Lawrie says: "Owners of most, if not all, lands held by feudal tenure were bound to supply food and necessaries for the King or overlord when he passed through the land or its neighbourhood." The very close connection, if not indeed identification with 'conveth' will be apparent.

In the Register of Glasgow there is a charter dated 1225 and given by Earl Duncan of Carrick, in which he solemnly undertook to pay all his tithes and dues. He promised also that he would no longer oppress the clergy of Carrick with exactions, and exempted them particularly from a certain 'corredium ad opus servientium suorum qui kethres nuncupatur'.<sup>2</sup> In this case, a payment of some sort, commonly known as 'kethres' had been in the past made by these clerics for the sustenance of the Earl's servants. The precise significance of 'kethres' is somewhat obscure, though it must be of Celtic etymology and possibly a corrupted form of 'conveth'. Something of the same nature may be traced in the so-called 'chamber of Deese' or best room in the farm houses of a certain class of tenant which was set apart for the reception of the landlord.<sup>3</sup>

The right of 'hospitagium' often reserved by Scottish donors from religious houses bears some resemblance to the English 'corrody', though of course it was by no means an exact counterpart.

(1) E.S.C., no. 178. (2) Glasgow, vol. 1., no. 139.  
(3) Robertson's 'Historical Essays', p. 107.

On the whole, Scottish holders in frankalmoign cannot have been much vexed by such payments to their superiors. The 'conveth' or 'corody' must have been a return made to them much more frequently than a burden discharged by them.

.....

#### 7. Services pertaining to Jurisdiction:-

Under this heading there fall to be considered court-suit, pleas, appeals, fines, and any other terms pertaining to the administration of justice which may be found in the early charters. We frequently find a 'reddendo' like this - "Reddendo tres sectas curiae ad tria nostra placita capitalia." According to Cosmo Innes "This suit was to make up the necessary gathering required for business, members of assize, witnesses, compurgators, etc. Those holding by such service were suitors - 'sectatores curiae'.." <sup>1</sup>

Every grant of land to a church carried with it the right of jurisdiction, i.e. all suits, pleas, and complaints arising among the tenants of that land had to be taken to the court of the ecclesiastical landholder for decision. Whether or not the grant contained the clause 'Cum sacca et socco...' it must be held that the right of jurisdiction went with it. The grant meant further that the Church tenants owed 'suit' to the Abbot's or Bishop's court, i.e. they had to attend it in the capacity of 'suitors'. For example, we saw above that in a controversy between Arbroath and one of her tenants, the witnesses gave evidence "quod viderunt Nicholam de Inverpefir sequentem curiam abbatis de Abirbrothoc pro terra sua de Inverpefir..." <sup>2</sup>

(1) Legal Antiquities, p. 61. (2) Arbroath, vol. 1., no. 250.



Other instances may easily be found. Hugh Crawford held from the Abbot of Kelso the land of Draffane, owing, inter alia, 'sectam ad curiam nostram'.<sup>1</sup> Simon of Lestalrig held from Dunfermline the land of Halys, 'Salvis predictis abbati et conventui secta curie.'<sup>2</sup> Henry, Bishop of Aberdeen, granted to Adam de Pil-mure the land of Glak for the giving yearly 'ad curiam nostram tres sectas.'<sup>3</sup>

We must not dwell, however, upon the services exigible by the Church as feudal superior from her tenants, but rather consider the position of the Church as tenant herself of some superior, whether King or subject. What services in the way of court-attendance, etc., could be required of her? It must be conceded at once that where the Church held in frankalmoign without any specific reservation as to service of this nature, no 'suit' could be demanded. That is, the clerics had not to act as 'suitors' to the court of their superior, nor had they to take the pleas arising in their land to his court for decision.

Illustrations of freedom from the rendering of 'suit' expressly stated may be found in the Newbattle Register, where Radulph of Holyrood granted land in Petyndreich to be held in feu-farm, free from all service, aid, 'sequela curie', and multure;<sup>4</sup> and again where Robert I. confirmed the charter of Gerard de Lyndsay conceding the liberties of a barony in the land of Craufurd - "Tenendam...in liberam, puram, et perpetuam elemosinam et in liberam Baroniam cum furca et fossa....sine aliqua secta curie.." <sup>5</sup> Or again in the Register of Paisley, where in 1361, Robert, the Steward of Scotland, confirmed all the possessions of the Abbey which were to be held free from all secular service, including 'sectis curie'.<sup>6</sup>

(1) Kelso, vol. 2., no. 474. (2) Dunfermline, no. 230.  
 (3) Aberdeen, vol. 1., p. 37. (4) Neubottle, no. 6.  
 (5) Ibid., no. 150. (6) Paisley, p. 68.



In very few cases was the duty of giving 'suit' reserved by the charters of the donors. The Newbattle Register again furnishes an illustration in a charter by a certain Mariota, widow of Nigel of Carrick, granting in free, pure, and perpetual alms, a third part of the land of Maysterton, the sole reservation being - "Faciendo etiam sectam curie domini Regis apud Edinburgh que debetur pro eadem."<sup>1</sup> This was confirmed in 1320 by Robert I. on the same conditions, the reservation being expressed thus: "Faciendo inde sectam ad curiam Justiciarie nostre apud Edinburgh quociens ibidem tenebitur pro omnimodis aliis serviciis."<sup>2</sup> Seven years later, Robert I. granted a charter to the monks of Culross to the effect that the barony of Philpstoun which they had formerly held of him for forinsec service and attendance at courts, should now be held in free, pure, and perpetual alms, without any forinsec service.<sup>3</sup> The inference here is that the duty of court-attendance would still be required, unless of course it can be taken as being covered by the term 'forinsec service', which is in this case, if anything, improbable, for the two services are so definitely distinguished in the first part of the charter.

A charter from the Cambuskenneth Chartulary bears further on this point, and illustrates the normal clerical immunity from the burden of 'suit'. In 1390, Robert III. informed his sheriff of Edinburgh and the bailies of Linlithgow that the lands of Ketliston belonging to Cambuskenneth had been unjustly compelled to make common suit of court and other services against the tenour of the charter of David I., and that the exaction must cease.<sup>4</sup> As we indicated above, the adjective 'common' which is here used to qualify 'suit' might well be adduced to support the contention that the rendering of 'suit' was part of the 'servitium forinsecum'. In this connection, further, it will be remembered that on one

(1) Neubottle, no. 55. (2) Ibid., no. 58.

(3) Proc. Soc. Ant., vol. 60. (4) Cambuskenneth, no. 173.

occasion the adjective had been expressly used to describe 'sectae'. The duty of giving 'suit' to the King's courts was very probably a burden pertaining to lands held from the Crown, and one which might be handed over to the grantee in the event of any subinfeudation. Mariota's charter leaves no room for doubt upon this point, for land was conferred by her on the Abbey of Newbattle, and the suit 'que debetur pro eadem' was in future to be rendered by the monks.

The terms 'assizes', 'pleas', and 'disputes' ('assisae', 'placitae', 'querelae') may be taken as variants of the same thing. Clauses like 'liberam ab assisiis et placitiis et querelis' signified simply that all litigation arising within the bounds of the land conveyed by the charter had to be taken to the court of the grantee, and that there would be no jurisdictional interference from without. The conventional phrase 'sacca et socco, tol et team' need not detain us here, for it was purely a judicial privilege to be enjoyed by the grantee, clerical or lay, and never a burden to be discharged. That is to say, the charters always run - 'Tenendam cum sacca...' and never 'liberam a sacca...' To define and discuss these terms would therefore be quite irrelevant to our subject.

With the grant of jurisdiction went as a matter of course the revenues pertaining thereto, viz. fines, escheats, forfeitures, etc. Controversies between lay grantors and ecclesiastical grantees as to who should enjoy the profits of jurisdiction were not unknown, and in some cases agreements were reached between the two. The Register of Melrose supplies an instructive account of such a compromise struck between Richard de Moreville and the Abbey in settlement of a dispute about the forest-lands lying between the Gala and the Leader. The following is an abstract:-

The monks were to get all the lands in question, save the wood called Threpwood, the pasture of which had nevertheless to go to them. Richard was to have his own forester to look after his ground, while the monks would similarly have theirs to protect their woods and pastures. Richard was to get all the forfeits from the forest. If anyone be found doing damage to the woods or pastures of the monks, the latter will receive a compensatory payment while Richard will get the forfeiture. And if Richard's rights are infringed by any of the monks' servants, the monks will 'do right' to Richard for their servant at the gate of the Abbey. And if any monastic servant be taken upon Richard's reservation, and fails to appear at the gate of the Abbey in his own defence, the monks will, on the conviction of the offender, pay to Richard the wages of the servant for the space of half a year....For this quitclaim by Richard the monks will give him 100 marks of silver.<sup>1</sup>

The word 'escheats' is sometimes used in the sense of 'fines', or pecuniary mulcts payable by way of compounding for some wrong done. For example, in an agreement between the Abbot of Paisley and Thomas Fulton, about 1272, it is stated that the latter will hold his land "cum omnibus libertatibus...et placitis de wot, de wrang, et hunlawe, cum eorum escaetis."<sup>2</sup>

Generally in grants of land, with the right of jurisdiction either implied or stated, the King reserved his own rights in what were called the pleas or 'points' of the Crown - 'quatuor puncta coronae', viz. murder, arson, rape, and robbery. But very occasionally the jurisdiction in these was conveyed as well: for example, a confirmation by Alexander II. to Arbroath wherein it is stated that the land will be held "cum socco et

(1) Melrose, vol. 1., no. 111. (2) Paisley, p. 52.



sacca...et cum placitis et loquelis ad coronam nostram spectantibus," while a similar privilege was conferred by Robert I. in his grant of the great Earldom of Moray to his nephew Randolph.<sup>1</sup>

By way of illustrating the reservation of these 'pleas of the Crown' we may instance, first, a grant from Dunfermline to William, son of Ingeram, of the land of Pontekyn, to be held in fee and heritage "liberam ab omni servitute et querele que ad dictam terram pertinent preter ea que ad regiam coronam sunt pertinentia.." <sup>2</sup> Secondly, Alexander II.'s confirmation to the Knights of St. John, where it is stated that their lands will be free from all service and exaction "excepta sola iusticia hominis condemnati, et exceptis quatuor loquelis que ad coronam nostram pertinent, scilicet de Roboria, de Murthere, de combustione, et femina efforciata.." <sup>3</sup> Thirdly, Alexander II.'s confirmation to Holyrood of the land of Kalentyr to be held in feufarm "Salvis nobis querelis et placitis de eisdem terris ad coronam nostram pertinentibus.." <sup>4</sup> Fourthly, Alexander II. granted to the monks of Pluscarden, along with certain lands specified, all suits and pleas in all the foresaid possessions, happening in their court, which we give to them to be litigated and determined excepting those that specially belong to our crown.<sup>5</sup>

An unusual form of the same thing occurs in a charter granted by John de Vesci to Melrose, confirming the gift of William de Sprouston of land in Molle. As feudal superior, he states that the land will be held in free, pure, and perpetual alms, "salvis nobis...placitis et escaetis de corona emergentibus" <sup>6</sup> This reserving to a subject the pleas of the Crown seems at first

(1) R.M.S., vol. 1., no. 294. (2) Dunfermline, no. 301.

(3) Neubottle, no. 222. (4) Holyrood, no. 65.

(5) Nat. MSS., vol. 1., no. 26. (6) Melrose, vol. 1., no. 345.



sight contradictory, but it is not really so; for the explanation is simply that the pleas of the Crown, previously granted to the De Vescis by the Crown, must accordingly still be due to them.

In several royal charters or confirmations to the early Church we find the words '*salva iusticia regali*', usually combined with the reservation concerning the defence of the kingdom. By way of example we may mention David 1.'s charters to Dunfermline (c.1128)<sup>1</sup> and Cambuskenneth (1147)<sup>2</sup>, and William the Lion's confirmation to Arbroath (c.1212)<sup>3</sup>. In these cases, the clause may be interpreted to mean the right to hear appeals at the King's courts, if the Abbot should fail to do justice, or, as it is put in the Cambuskenneth charter - "*si prelatu aliquo impulsu a iusticia exorbitaverit*;" or in the Arbroath deed, "*si abbas in curia sua aliqua negligencia de iusticia deciderit*." It might be maintained also that the 'royal justice', as reserved in the above, comprehended the pleas of the Crown as well as the right to hear appeals from the courts of the Church.

According to Cosmo Innes, the right to try cases involving life and death was not a normal prerogative of the ecclesiastical courts. This jurisdiction in life and limb ('*curia vitae et membrorum*') was conveyed by the insertion in the charter of the phrase '*cum furca et fossa*', i.e. the right of pit and gallows, the French equivalent being '*avec haute et basse justice*'. Professor Mackinnon is also of the opinion that the grant '*cum furca et fossa*' was not usually conveyed in ecclesiastical charters. Nevertheless it may be found in the following cases:-

a. Alexander 11.'s confirmation to Arbroath, granted c. 1214.<sup>4</sup>

(1) E.S.C., no. 74. (2) Ibid., no. 179.

(3) Arbroath, vol. 1., no. 1. (4) Ibid., no. 100.

- b. Charter by Alexander 11. to Scone.<sup>1</sup>
- c. Grant by Alexander 11. to Arbroath of the land of Nigg.<sup>2</sup>
- d. Grant by Alexander 11. to Arbroath of the land of Tarves.<sup>3</sup>
- e. Confirmation by Robert 1. of a grant to Newbattle by Gerard de Lyndsay of the land of Craufurd.<sup>4</sup>

Other examples will be found throughout the Chartularies, but on the whole they are few and far between. If this capital jurisdiction were not generally granted to the Church, it possessed the higher and more mysterious type - the direct appeal to Heaven by ordeal. This high jurisdiction was possessed by the Abbots of all the great Scottish monasteries, for example, William's confirmation to Scone of the liberty of holding their own court, in combat, in iron, and in water ('examen aquae, ferri calidi, et duelli').<sup>5</sup> In those cases where the Church enjoyed capital jurisdiction, it would seem that the judicial function in the trial of lay delinquents, guilty of crimes involving the death penalty, was usually exercised by the ecclesiastical bailie or steward. "No churchman", we read in the enactments of David, Bishop of St. Andrews, "shall write or dictate a sentence involving bloodshed."<sup>6</sup>

The following conclusions may be advanced regarding the judicial rights and duties of the Church:-

- (a) All land-grants to the Church, whether in alms or in ordinary feu, carried the privilege of jurisdiction over the tenants of the lands conveyed.
- (b) Jurisdiction in capital cases, except in a few isolated cases, was withheld.

(1) Scone, p. 22. (2) Arbroath, vol. 1., no. 101.  
 (3) Ibid., no. 102. (4) Neubottle, no. 150.  
 (5) Scone, no. 31. (6) Statutes of Sc. Church, 65.

- (c) The Crown reserved the right to hear appeals from the ecclesiastical courts in the event of the Bishop or the Abbot failing to do justice.
- (d) What were known as the 'pleas of the Crown' were usually withheld from the grant.
- (e) The burden of giving suit at the royal or baronial courts was exigible, unless, as was normally the case, exemption were granted.

. . . . .

8. Miscellaneous 'Reddendos':-

First let us consider those cases where we find an elemosynary grant burdened by the duty of returning to the grantor a sum of money. As we concluded above, the theoretic immunity of the 'elemosina' from secular service or exaction of any kind was, as the 12th century advanced, frequently disregarded, and it became fairly common for ecclesiastical benefactors to attach to their alms-grants some trifling 'reddendo', sometimes stated to be 'in recognition of' the donation. Though the earliest 'blench' grant, so-called, dates from the early part of Alexander 11's reign, 'reddendos' which approximated closely to the same form had been common in Scotland for some considerable time previously.

Let us collate some examples of money 'reddendos' of

this type:-

- (a) Richard, Bishop of St. Andrews, granted to Scone the church of Logydurnach, to be held in free, pure, and perpetual alms for annual payment of a half mark of silver. (1165-1214)<sup>1</sup>
- (b) Richard de Leicester granted to Inchaffray in pure and perpetual alms certain lands in Perth for an annual payment of 16/- . (1240)<sup>2</sup>
- (c) Duncan Fitz-Gilbert granted to Melrose in free, pure, and perpetual alms the land of Bethoc for two marks yearly. (1165-1214)<sup>3</sup>
- (d) William of Lilliesleaf granted to Melrose two tofts in Haddington in pure and perpetual alms for 4d yearly. (1214-49)<sup>4</sup>

Other examples may be found in the Melrose Register of payments varying generally from half a mark to two marks. The last instance cited, viz. an annual payment of 4d, is clearly 'blench' in all but in name, for elsewhere we may find a charter where the payment of half a mark is stated to be 'nomine albe firme'.

In trying to explain the apparent anomaly of a tenant in frankalmoign being required to make a return of some sort, Sir Thomas Craig refused to classify money or 'blench' payments as services in the accepted feudal sense. After discussing Continental practice in this respect, he wrote: "Nos feudum francum blancum dicimus quod ab omni servitio liberum est."<sup>5</sup> He distinguished between the words 'faciendo' and 'reddendo', the former being used exclusively to denote services, the latter to

(1) Scone, no. 40.

(2) Inchaffray, no. 69.

(3) Melrose, vol. 1., no. 29.

(4) Ibid., no. 208.

(5) Jus Feudale, quoted by 'Censor' in Jurid. Rev.,  
Dec. 1929.



signify money or 'blench' payments. A plausible case can easily be made out for the differentiation. The verb 'facio' may be translated in several ways, e.g. 'make', 'do', 'perform', 'render'; etc., whereas for 'reddo' there can be but the one meaning, viz. 'give back' or 'return'. In the charters the distinction is consistently observed. The word 'reddendo' is rarely if ever prefixed to burdens such as 'exercitus', 'auxilium', 'operacio', 'secta', etc., while 'faciendo' is never found before a burden such as 'sex solidos' or 'unam petram cere'. The following is a good illustration: "Reddendo annuatim decem libros..et faciendo forinsecum servitium in auxiliis et exercitibus et aliis." In the strictly literal sense, too, a payment in money or in kind is not a service, in so far as the tenant does not thereby 'serve' his master, i.e. does not supply personal assistance in the carrying out of any task, does not work for him, or attend or wait upon him in any way. This is drawing a fine distinction between the two terms, and it is certain that, in the eyes of the mediaeval lawyer, the burden denoted by 'reddendo' was as much of a 'service' as that described by 'faciendo'.

A recent article in the 'Juridical Review' by 'Censor' attacks Craig's definition and proves fairly conclusively that the payment of a sum as small as one penny, of a pair of spurs, of a pound of pepper, or any of the typical 'blench' payments, must be held to be a service in the full feudal sense. His most convincing proof is the clause, common to many such charters - "Reddendo unum par calcarium aut sex denarios pro omni alio servitio." The use here of the words 'for all other service' implies and proves that such trivial payments were regarded by contemporaries as services. This would supply an ample justification for including a discussion of 'blench' payments in a

consideration of secular services, if indeed any such justification were required. The number of charters containing elemosinary grants burdened by services of this nature is small, however, in proportion to the number which are entirely unqualified in any way.

The usual blench-payments required of ecclesiastical tenants were pepper, cumin, and wax. An interesting charter which illustrates the practice is that of a certain Henry Bald who granted to Scone in pure and perpetual alms some of the land held by him from William the Lion, for the following payment: "Reddendo....camere domini Regis Scotorum unam libram piperis pro omni servitio et Monachis de Cupro dimidiam petram cere ad purificationem beate Marie nomine elemosine."<sup>1</sup> The last two words are significant, meaning as they do that the payment of the pepper and wax was, in the grantor's eyes, a merely nominal one to be made in recognition of the 'elemosina' received. We need not give further illustrations of such services, for they do not vary much from the form of that quoted.

So far we have been considering payments stipulated in charters conveying lands to be held in frankalmoign. Where the donation was held in feufarm, some annual payment in money or in kind was the normal burden, although, in some cases, we find lands held nominally in feufarm but quite free from all secular service. A typical example of the former kind is Alexander 11.'s grant to Moray of the land of Kynmyly to be held 'ad feodam firmam' for an annual payment of £10 and the performance of the full forinsec service.<sup>2</sup> As an example of the latter type there is Earl Henry's grant to Kelso of a toft in Berwick to be held 'in feodo' but as freely as any 'elemosina'.<sup>3</sup>

(1) Scone, no. 86. (2) Moray, no. 34.  
(3) Kelso, vol. 1., no. 29.

Occasionally there is nothing in the charter to indicate by what tenure the land was to be held. As noted above, most of these grants belong to the early 12th century, but at intervals they may be found later. For all practical purposes these must be considered as governed by the same rules as tenure in frankalmoign, and especially so if the words 'freely and quietly' occur in the 'tenendum' clause. For example, we find David I. granting to Coldingham a toft at Ednam for a 'reddendo' of two shillings, "et per hoc servitium libere ab omni alio servitio."<sup>1</sup> Or Roger de Wyntoun, the Constable, confirming the grant to Scone made by William de Len, to be held freely and quietly for a yearly return of half a mark of silver.<sup>2</sup>

Another secular service which was occasionally reserved by lay benefactors of the Church was the duty of providing 'hospitagium'. This may be defined as a duty incumbent upon the ecclesiastical donee to supply board and lodging, whenever required, for the donor and his heirs, or for anyone whom the donor might specify. As pointed out above, the practice has certain affinities with the English 'corrody'. The burden could not have been an onerous one, and even though reserved, might rarely be exacted. By way of illustration we may give two charters from the Dunfermline Register. The first records a grant by Walter Fitz-Alan of twenty acres and a toft in Dunfermline, to be held in perpetual alms "salvo hospitagio meo mei et heredibus meis super eam faciendo."<sup>3</sup> The second is a donation by David de Lyndsay of a toft in Haddington, where we find the same reservation "Salvo mei et heredibus meis ostallagio cum venerimus."<sup>4</sup> Freedom from the duty ('liberas...de estallagio') is granted in Alexander II.'s confirmation to Torphichen.<sup>5</sup> We may

(1) E.S.C., no. 111.

(2) Scone, no. 79.

(3) Dunfermline, no. 161.

(4) Ibid., no. 191.

(5) Neubottle, no. 222.



safely assume that, like all other burdens, the service was not exigible unless definitely specified in the donor's charter.

In a grant by Malcolm IV. to the Priory of St. Andrews of the buildings ('edificia') of Balwin Lorimer of Perth, to be held in free alms along with the ground in which they stand, we find, after complete exemption has been conferred, the following reservation: "Excepta vigilia Burgi et claustrum quantum inde pertinet ad edificia illa et ad terras illas."<sup>1</sup> This duty may be interpreted as that of helping to guard the town and its fortifications or walls - an obligation generally incumbent upon dwellers within a burgh. The clause 'quantum pertinet ad edificia illa' is deserving of note, for it suggests that this burghal service was assessed in proportion to one's holding in the burgh. This grant to the monks of St. Andrews must mean, therefore, that they will hold this property and land in Perth on condition that their tenants will discharge this burden, in numbers determined by burghal custom.

The subject of 'Tithes' ('decimae') need not detain us, for although a church or abbey might make the payment in respect of land held from some other religious house, tithe-payment was a right enjoyed by the Church landholder and not a duty to be discharged. Grants of land to the Church included tithes which were derived mainly from grain or agricultural produce. But in David I.'s charters they embraced a large variety of objects - animals, fishings, huntings, burgh rents, ships' cargoes, escheats, pleas, mills, coal, salt, and iron, and some of these are referred to as forming part of the King's 'can' or revenue, of which a tithe or tenth is granted to the ecclesiastical beneficiary.

(1) St. Andrews, p. 204.



F. Charters of Confirmation:-

We shall consider these under two heads, viz. confirmations by the Crown and confirmations by subject-superiors. As donors who held direct from the Crown were required to have the confirmation of the King when making a gift to the Church, so in cases where the donor held of a subject, a confirmation of the grant by that overlord was necessary. In confirmations of both types, the important clause for our purpose is the 'Salvo servicio meo', which, of course, does not always appear.

Take first a typical charter from a subject-superior. In the Chartulary of Coldstream, we read that Amabel, wife of Norman of Leynal, made a grant of the lands of Scaithmore to the nuns in free, pure, and perpetual alms.<sup>1</sup> But Patrick, Earl of Dunbar, who was Amabel's superior, in his confirmation substitutes for the full style 'free, pure, and perpetual' the simpler 'in perpetual alms', and then adds the clause 'salvo servitio meo'. Dowden, who notes this charter, says: "By this change and addition, it is implied that the feudal services due to him from the lands while in the possession of Amabel were still to be rendered by the new holders. In such cases, holding in frankalmoin practically came to mean freedom from rent, but not from feudal services."<sup>2</sup> But Dowden is wrong in making this conclusion, for there is nothing in the three words 'salvo servitio meo' to indicate that the nuns of Coldstream were to respond for Earl Patrick's service.

What is meant by the 'service' of the Earl? Simply that he had in the past granted land to Amabel on certain conditions which constituted the service due from her to him. Very

(1) Coldstream, pp. 3-5. (2) Med. Church, etc., p. 157.

probably also, in the Earl's charter to Amabel there would be included some arrangement as to the performance of the King's forinsec service, which no doubt she would have to discharge. The reserving clause '*salvo servitio meo*' in Patrick's charter to Coldstream means simply, therefore, that Amabel's service is still due to him, and that the bargain as to the forinsec service must be adhered to. In no case can a reservation of this nature mean that the burden of the overlord's service will fall upon the ecclesiastical donee, unless, of course, there were a stipulation to that effect in the latter's charter from the donor. Dowden himself comes round to this point of view in his Introduction to the Chartulary of Lindores, where, in reference to a royal '*salvo servitio meo*', he writes: "In such a case the land was conveyed, the monks were exempted from the military service due from the lord, which, though still to be rendered to the King, was to be rendered by the superior."<sup>1</sup>

Many other examples can be found of confirmations by subjects containing this reservation. Where they are framed on lines identical to those of Earl Patrick's charter we need not quote further. The following, however, present instructive divergences from that style:-

- (a) Confirmation by Patrick, Earl of Dunbar, of the grant to Newbattle by Adam Fraser in pure and perpetual alms. To be held as freely as stated in the charter of Adam, "*Salvo servicio meo de dicto Ad<sup>a</sup> et heredibus suis.*"<sup>2</sup>
- (b) Confirmation by Duncan Fitz-Gilbert of a grant to Melrose by Roger de Scalebroc in free, pure, and perpetual alms - "*Salvo servicio meo de predicto Rogero.*"<sup>3</sup>

(1) Op. cit., p. lxxv. (2) Neubottle, no. 79.  
 (3) Melrose, vol. 1., no. 35.

- (c) Confirmation by Patrick de Ridale of a grant to Melrose by Robert de Bernaldebi in free alms, "Salvo servicio meo quod mihi...ipse Robertus et heredes sui pro eadem terra facient."<sup>1</sup>

When the reservation is expressed in this form, all ambiguity disappears, for it is clearly stated that the services of the superiors must still be rendered by these benefactors of the Church. It would be very rash, indeed manifestly inaccurate, to argue from these more specific clauses that, where no names were mentioned, the burden of discharging the superiors' services fell on the Church beneficiaries.

The following three charters, though not confirmations are of sufficient interest to be noted here as exemplifying the use of the 'salvo servicio meo' clause:-

- (a) A grant by William de Lyndesay to Neubottle of land in Craufurd, to be held in free and perpetual alms, "Salvo servicio domini Regis et servicio ad Swanum thore filium."<sup>2</sup>
- (b) A grant by Alan Fitz-Rolland to Dryburgh of a toft and croft in Samsonschelis, "Salvo nobis et heredibus nostris servicio nostro."<sup>3</sup>
- (c) A grant by Grim, son of Guy, to Melrose of a toft in Berwick which he held of William de Sumervil, to be held in pure and perpetual alms, "Salvo servitio domini Willelmi de Sumervil," due from Grim for that holding.<sup>4</sup>

The first and third can be treated together, for in both we find an eleemosynary grant burdened by a reservation of secular service due to the grantor's superior. Examples of this nature give support to the suggestion advanced by Maitland that

(1) Melrose, vol. 1., no. 153. (2) Neubottle, no. 135.  
 (3) Dryburgh, no. 180. (4) Melrose, vol. 1., no. 28.

the exemption from secular services was not conceived as the most essential feature of tenure in frankalmoign.<sup>1</sup> The Newbattle charter shows a feudal ladder of four rungs: the King, Swanus, De Lyndesay, and the Abbey. It contains also a dual reservation viz. the King's service and Swanus' service, the former being the forinsec burden pertaining to all land, which has been transmitted from Swanus to his vassal, Lyndesay, and from him to the monks, who in turn would doubtless have it carried out by their own tenants in that land.

The charter of Alan Fitz-Rolland is at first sight puzzling. There is no mention of 'elemosina', no stipulation as to services or rent, and yet it concludes with the reservation 'saving my service'. The explanation would seem to be that certain services were due from all Alan's tenants in this land of Samsonschelis, possibly by virtue of privileges held by him from the Crown. Alan held this land in fee and heritage, which meant that he enjoyed jurisdiction over the inhabitants with all the fees and emoluments that made such a grant so valuable. Other rights which would go to make up what might be termed his service would be the exaction of mill-dues, services of an agricultural nature, carting of peats, etc., and labour on the land generally. Viewed from the angle of the normal lay tenure 'in feodo', the charter becomes clear. The grant is not in frankalmoign, there is no definite service stipulated, but the services due normally to Alan from all tenants within his fief of Samsonschelis are to be due from the monks of Dryburgh.

The clause 'salvo servitio meo' as it occurs in royal confirmations has two quite separate meanings which are practically always comprehended by the one term. First, it

(1) English Law, vol. 1., p. 224.



refers to the services due from the donor of the charter which is being confirmed, as specified in his own charter of enfeoffment from the Crown; and secondly, it must be held to include also the King's forinsec service, due from the land in question as from all other lands in Scotland. To state a hypothetical case: the King enfeoffs Earl A for the service of ten knights; Earl A uses part of this land to enfeoff Abbey B in pure and perpetual alms. The 'salvo servitio' clause in the royal confirmation of A's charter to B means first, that the full service of ten knights must still be rendered by A even although the latter has granted away part of his holding; and secondly, that the King's forinsec service in army, aids, expedition, and operation, which pertained to that part of A's fief granted to B, must still be rendered by A

What was the position, however, when the royal confirmation did not contain this reservation? It is only after the accession of William the Lion that the 'salvo servitio' clause becomes a usual feature of such charters. Lawrie's collection, which goes as far as 1153, contains no illustration of its use. The presence or absence of this clause must not be treated as being of no significance. On the contrary, the point is one of great importance so far as secular services are concerned. For example, consider these two confirmations by Alexander II. of grants to Paisley by Maldouen, Earl of Lennox:-

- (a) Land in Lennox and the church of Kylpatrick, to be held in free, and perpetual alms. No reservation specified.<sup>1</sup>
- (b) The lands of Drumtocher and Drumtglunan, to be held in free, pure, and perpetual alms, 'Salvo servitio meo'.<sup>2</sup>

The significant fact is that both these confirmations were given by Alexander II. at Stirling, on the 22nd October, 1228, and were witnessed by the same people. This is surely

(1) Paisley, no. 172. (2) Ibid., p. 173.

proof that the omission of the saving clause from the first was deliberate and not an accidental circumstance of no moment.

Further proof of this can be obtained by examining any general confirmation, as, for example, that granted by William to Arbroath towards the close of his reign. The following is an excerpt:-

"Concessi eciam eis et confirmavi ex donacione umfridi de Berkeley terram de Belphe...salvo servicio meo; ex donacione Johannis de munfort terram de Glasker salvo servicio meo; et donacionem illam quam Willelmus filius bernardi fecit eis de duabus bovatis terre que vocatur rath...salvo servicio meo..... Concessi eciam eis et confirmavi...donacionem illam quam turpinus episcopus de Brechin eis fecit, scilicet unum toftum et croftum in villa de strucathro et duas acras....et toftum illud in burgo meo de forfar quod hugo cancellarius meus eis dedit..."<sup>1</sup>

Analysing this charter, we find, first, an enumeration of his own endowments without reservation; secondly, seven confirmations of grants of churches by subjects, without reservation; thirdly, nine confirmations of grants of various lands by subjects, all followed by the clause 'salvo servicio meo'; and fourthly, seven confirmations of various grants by subjects, each without reservation. Then at the end comes the general reservation covering 'omnia dona predicta' which runs 'defensione regni mei excepta et regali iusticia'.

Our conclusion is that where the 'salvo servicio' was not included, the land in question must have been free from the burden of the King's forinsec service, unless (and this is an important condition) the charter which was being confirmed con-

(1) Arbroath, vol. 1., no. 1.

retained some definite arrangement as to the performance of that service. Sometimes we find such an arrangement made between lay donor and clerical donee, and yet the royal confirmation includes the 'salvo servitio' clause. Discussing such a situation from the Arbroath Register, Macphail<sup>1</sup> inclines to the opinion that the words 'salvo servicio meo' were redundant and therefore superfluous. Might they not refer, however, to the feudal services exigible from the donor, as stated in his charter from the Crown, and not to the forinsec service which is expressly reserved in the donor's charter to the Abbey?

It will be noted that we have hesitated to conclude that the absence of the 'salvo servicio' in a royal charter freed the donor of the charter confirmed from the normal feudal services due from him as a tenant-in-chief of the Crown. It might be thought that the omission of the reservation would afford a strong legal basis on which a subject might claim himself to be free from all service, feudal and forinsec alike, in respect of that land which he had granted to the Church.

A proper understanding of the feudal theory of tenure will elucidate most of these seeming problems. Perhaps its most remarkable characteristic was that several persons, in somewhat different senses, might be said to possess the same piece of land, with each person from the tenant-in-chief downwards enjoying rights and owing duties in respect of it. Abbey X holds from Earl A in frankalmoign. This is not alienation on A's part, but subinfeudation, for X is his tenant as much as Y and Z who hold from him 'in feodo'. And in so far as X is the tenant of A, the land, in the eyes of the Crown, is still possessed by A who can by no means, therefore, be considered freed from the service by which

(1) Highland Papers, vol. 2., p. 231.

he holds from the Crown. 'Salvo servicio meo' or no 'salvo servicio meo', it must be concluded that the grantor was still burdened with the service stipulated in his charter of enfeoffment.

A charter to Brechin by Robert 1. illustrates his attitude to this question. It declares that the lands and possessions of the Bishopric are to be free from all secular service and exaction, and at the same time provides that the obligations on lands which have been granted by various benefactors shall be exacted, but exacted wholly from the founders and benefactors ('a fundatoribus et infeodatoribus'). And the royal officers are directed, if the necessity should arise, to distrain the head-feus of the founders, so that the lands and possessions of the Church shall be entirely free from all burdens and exactions.

It is different when the 'salvo servicio' occurs in a direct grant from the Crown to the Church. In such cases the import is clear, namely, that no exemption is granted from the burden of the forinsec service due from the land in question to the Crown. One thing is certain: that the presence of the clause 'salvo servicio meo' in the numerous charters of confirmation to be found in the Chartularies did not imply services to be rendered by the Church donees, but rather by the lay donors.

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G. The Legal Value of the Immunity Clause:-

In the above pages, the question has occasionally arisen as to what legal interpretation could be put upon the language of charters where duties were specified or immunities conveyed in very vague and general terms. The point is of some importance in view of the Church policy of later Scottish kings. That David I. had been a 'sair saint to the Crown' was recognised by more of his successors than James I., for it was but natural that a munificent endowment of bishoprics and abbeys with Crown lands would cripple the monarchy while enriching the Church. We have noted, also, that the clerics clung jealously to the privileges and immunities as granted in the 12th and 13th centuries, whereas later monarchs, particularly from the 15th century down to the Reformation, would dearly have liked to finger the ecclesiastical revenues. In the reign of James V., it has been pointed out that "the royal attention was fixed upon the national economy and upon extracting sums from the churchmen by way of contribution."<sup>1</sup> The same writer in outlining the chief features of the royal ecclesiastical policy from the time of James I. says: "From that period it is easy to detect a growing assertion of the power of the Crown, and an increasing sense of nationality in opposition to the claims of the Papacy. A desire to prevent the flow of money to Rome, to control the appointments to important benefices and attach the prelates to the Crown, to recover some of the wealth alienated by the ancient piety of David I. - these are some of the familiar features of the development." There is thus a logical connection between the Church policy of David I. and his immediate successors on the one hand and that of the 15th and 16th century monarchs on the other. The former granted away with great munificence, while the latter sought to recover some-

(1) Hannay, S.H.R., vol. XVI., p. 52 et seq.

:thing of what had been alienated in the past.

Despite the vague nature of many of the mediaeval 'tenendum' clauses, they could be held by the Church to supply strong legal grounds for claiming immunity. For example, 'tenendam liberam ab omni servitio seculari', 'tenendam libere et quiete', and others of a like nature, indefinite though they doubtless are, nevertheless might legally be held by the later Church to confer complete immunity in so far as they did not specify any particular service to be rendered. In a charter to Balmerino,<sup>1</sup> Henry de Candela includes the clause 'as well not named as named' in his grant, after he has declared that the land conveyed will be free from 'all secular service, exaction and demand, aids, tallages, army, and all other customs..' By so doing, he makes sure that the monks will not be vexed by any exaction which was not particularised in the grant. With regard to the forinsec services due from the land bestowed, it was open to the Crown to see that, in cases of grants by subjects, these services were not in any way prejudiced. It must be conceded, therefore, that no matter how vaguely or generally the 'tenendum' clause of an elemosynary grant might be worded, the immunity from secular service was indubitably conveyed; and that, though from the viewpoint of later monarchs the charters might have been more definite in their specification, no secular burdens could legally be imposed, unless, of course, there were express reservation to that effect in the original grant.

Maitland, writing of English frankalmoigns of the same period, came to the same conclusion:<sup>2</sup> "In later days the feature of tenure in frankalmoign which attracts the notice of lawyers is a merely negative one, viz. the absence of any service

(1) Balmerino, no. 49. (2) English Law, vol. 1., p. 223.

that can be enforced by the secular courts." For example, an Abbey required by the Crown in the early 16th century to make some contribution to the national exchequer, might refuse to do so, and justify its refusal on such a clause as this in its foundation charter - 'Liberam ab omni exactione et servitio seculari, defensione regni mei excepta'. An unscrupulous monarch of course might well seek a legal interpretation of this 'defensione regni mei excepta' that would make it cover other contingencies than the military one of defending the kingdom. But where there was no desire to stretch the letter of the charters so as to evade their spirit, the tenure of the great Churchmen must have remained highly privileged right down to the eve of the Reformation.

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#### H. The Church and other Feudal Tenures:-

In the Scottish charters of the 13th century, by which time feudalism was deeply engrained in the social and political fabric of the country with its various rights and duties well recognised, the following types of tenure may be noticed:-

(a) In fee and heritage ('in feodo et hereditate'): This was the normal tenure of the secular tenant-in-chief and of many of their tenants in turn. It involved military service, usually but not necessarily defined as the

service of so many knights, i.e. so many men had to be sent to the royal army for forty days in the year, and had to be maintained there at the expense of the lord. Forinsec service in its widest connotation was also due, as were the normal feudal prestations of 'relief', 'aids', 'wardship' and 'marriage'. With the grant went jurisdiction which was a valuable privilege by reason of the fines, forfeitures, escheats, etc., which flowed therefrom.

Examples of a church or abbey holding land in fee and heritage are by no means common. An examination, for example, of all the grants made to Arbroath from its foundation down to the end of the 13th century will reveal none, while the chartulary of Melrose for the same period contains no such grant. The following few instances, selected from all available sources, will serve to show, however, that the practice was not unknown:-

The foundation charter of Culross Abbey, granted c.1217 by Malcolm, sixth Earl of Fife, contains this rather paradoxical clause: 'And all these donations, lands, etc., the said monks shall hold by this present charter in free forest in fee and heritage of me and my heirs....with sac and soc, toll and team....in free, pure, and perpetual alms...I and my heirs shall answer to the King for the forinsec service for the said lands..'<sup>1</sup> The anomaly here is the combining of what were normally two quite distinct tenures, viz. in hereditary fee and in frankalmoign. The explanation, however, is simple. The grant in frankalmoign was clearly understood to be a feudal one, and this fact was sometimes distinctly stated, as in David 1.'s grant to Coldingham of a toft in Ednam which the monks were to hold 'in feodo et in elemosina' for an annual payment of two shillings.<sup>2</sup> Generally,

(1) Culross Charters.

(2) Coldingham Charters, no. 22.



however, the feudal character of the grant was assumed. Earl Malcolm's charter to Culross is similar to David's, with the difference that the words 'et hereditate' are added. We must always keep in mind that the majority of the Scottish nobles and monastic clerks would not be conversant with the nice differentiation between the various tenures as defined by feudal law.

The Dunfermline Register contains a charter by Robert 1. granting land in Berwick which had been forfeited by William de Orford. It was to be held in fee and heritage, while the 'reddendo' runs - "reddendo...firmas burgi de predictis terris et burgagiis debitas et consuetas et faciendo servicia debita et consueta de eisdem."<sup>1</sup> In a case like this, the conditions under which the Church held approximated very closely to those of feufarm. The rarity of such tenures amongst the Church lands serves only to throw into bolder relief the great predominance of privileged eleemosynary tenure in Scotland.

Though a very small proportion of Church lands was held in fee and heritage, it is fairly common to see an abbey or church enfeoffing tenants by that tenure. The Register of Kelso alone will furnish ample illustration of the practice: we read, for example, of Thomas, son of Reginald de Bosco, being granted the land of Estirdodingston,<sup>2</sup> and of Alexander de Redpath holding the land of Deryngton,<sup>3</sup> both in fee and heritage for a money-rent and the performance of the forinsec service pertaining to their respective holdings. There are many others: for instance, nos. 103 to 117 of the same Register all record grants to lay tenants on similar conditions.

(1) Dunfermline, no. 356. (2) Kelso, vol. 1., no. 242.  
(3) Ibid., vol. 2., no. 512.

(b) In feufarm ('in feodifirmam'): This was the tenure which was known in England as 'free socage'. No military service was involved, except always the forinsec service 'in exercitu', but an annual rent was payable either in money or in kind or in both. No grant of jurisdiction was conveyed, while various local services were exigible, e.g. ploughing, harvesting, carting, etc. As the name implies, the grant was made heritably - a sort of perpetual lease. This form of tenure differed from that merely on lease ('ad firmam') for a term of years, which carried only the usufruct of the land for the time being.

There are many more illustrations of Church lands held in feufarm than of similar lands held in fee and heritage. For example, Alexander II. granted to Moray the land of Kynmyly to be held 'ad feodam firmam in perpetuum' for an annual return of £10 and the rendering of the full forinsec service.<sup>1</sup> Robert Hunaud granted to Kelso in perpetual feufarm a sixth part of the land of Innerwick, to be quit of all service for a yearly payment of forty pence.<sup>2</sup> John de Montgomery, Vincent of Avenel, and others granted to Melrose some land in Innerwick in free, pure, and perpetual alms; also common pasture in the same, to be held in feufarm for an annual rent of ten shillings.<sup>3</sup> The contrast between tenure in alms and tenure in feufarm is well brought out by this last example. We need not exemplify the practice further, for the fact that the tenure was not unknown amongst Church lands is clear, as is also the nature of the services required. We should err, however, in concluding that it was a common practice for the Church to hold in feufarm, for the Arbroath Register for the period down to 1300 contains but one illustration as compared with innumerable grants in frankalmoign.

(1) Moray, no. 34. (2) Kelso, vol. 1., no. 249.

(3) Melrose, vol. 1., no. 61.

(c) In burgage:- This tenure resembled the feufarm very closely in respect of the payment of rent for the tenements held by the inhabitants of the burgh. Out of these payments evolved what was known as 'the farm of the burgh'.

The possessions of the Church within the burghs of the kingdom generally took the form of 'tofts', 'burgages', 'messuages', or 'hostilages' as they were variously termed. These might be held in free alms like any other extra-burghal possession, or 'in burgagio' like the burghal possessions of the laymen. Examples of both tenures can be found, and as a rule the great majority of the Church possessions were held by the former. For example, David I., in granting a 'full toft' in Berwick to the Priory of St. Andrews, stated that it should be held in perpetual alms, free from all service and custom, and that the men dwelling in it should be as exempt from exaction as other burgesses of the King's grants in alms.<sup>1</sup> Discussing this charter, Lawrie draws attention to a feature of these grants which is indeed noteworthy: "Note the vagueness of the grant; no particular toft is named, and it is hard to say that anything is conveyed." In the following charter from the Arbroath Chartulary we have the two tenures (burgage and alms) combined: a grant by Robert I. of a toft in Berwick-on-Tweed, to be held - "in liberum burgagium et in liberam regalitatem et in liberam, puram et perpetuam elemosinam."<sup>2</sup> This apparent contradiction means simply that, in respect of this toft, the monks of Arbroath will enjoy all the rights attaching to burgage tenure without being burdened by any of its duties.

Tenure in full burgage, as regards both rights and duties, is exemplified in the following confirmation by Alexander

(1) E.S.C., no. 226.

(2) Arbroath, vol. 1., no. 285.

11. of a sale made by John, son of Aylbrith de Roksburc, to Melrose of two burgages in the town of Roxburgh. The reservation runs: "Salvis nobis....decem solidis annuis...et alio servicio nostro ad dicta dua burgagia pertinente."<sup>1</sup>

(d) In Blenchfarm ('in albam firmam'): This tenure, which is not met with by that name until the early 13th century, was really only a development of feufarm. The name may be applied to all tenures where the rent specified was merely a formal acknowledgment of the lord's superiority, consisting of the annual presentation of some trifling article such as a pair of spurs, a hawk, a pair of gloves, wax, pepper, etc. The practice must be held to have existed long before the name, for petty 'reddendos' by way of recognition were fairly common, especially in ecclesiastical charters, right throughout the 12th century.

In charters to the Church, 'reddendos' of this kind were usually linked to a grant in frankalmoign, but occasionally we have them associated with other tenures. This is well exemplified in the charter from the Balmerino Register already quoted, wherein Henry de Candela confirmed his father's grant of land in Anstruther, to be held in feufarm, free from all secular service and custom, for a 'reddendo' of half a mark yearly, 'nomine albe firme'.<sup>2</sup>

A charter from Alexander 11. to Ivo de Kirkpatrick in 1232 shows how elastic a term 'blenchfarm' was. Ivo was granted the land of Kelosberne in fee and heritage for the service of the fourth part of one knight, 'nomine albe firme'.<sup>3</sup> This same Ivo

(1) Melrose, vol. 1., no. 239. (2) Balmerino, no. 49.  
(3) Register House Transcripts.



or his father held lands in the territory of Pennersaugh from William Bruce for the service of the eighth part of one knight. There is no consistency with regard to blench-holding, for we find the term applied to services which are relatively more weighty than some which are not so styled.

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# I. Analyses of Particular Chartularies:-

In the following pages we shall consider three monasteries, Melrose, Dunfermline, and Arbroath, and one bishopric, Glasgow. The first of these, viz. Melrose, will be treated in considerable detail, while in the case of the other three, we shall content ourselves with collating all the services specified in the charters of donation. In every case, the period under review will be from the foundation of the house or see to the end of the 13th century.

(a) Melrose:- In preparing this account, we have read through every charter in the Register for the period mentioned, made a brief analysis of each, and grouped them under the headings of the different lands conveyed. In giving the modern spelling of place-names and in settling other points of local topography, the first volume of the 'Origines Parochiales Scotiae' and Morton's 'Monastic Annals of Teviotdale' have proved excellent guides. We hope that this somewhat lengthy abstract will not be considered<sup>irrelevant</sup> to our subject, for it

shows how surprisingly little light is thrown upon the question of the secular service owed by the mediaeval Church in Scotland, and incidentally proves that the method adopted above of culling the evidence from all sources is more profitable than limiting the survey to the possessions of any one religious house. The various territories are arranged in alphabetical order. As the charters referred to are all in the first volume of the Melrose Register, the references at the foot of each page give only the number of the charter in question.

Adingston:- The monks had an hospital at Auldenistun in the upper part of Lauderdale for the use of their sick brethren. Walter Fitz-Alan gave them in all three plough-gates of land in that village with pasture rights in the forests of Birken-side and Liggar-dewude, and liberty to grind at his mill free of multure. To be held in free, pure, and perpetual alms.

Allanshaws:- Alan Fitz-Rolland of Galloway granted in free, pure, and perpetual alms the lands of Alwent-chawis in Lauderdale, and declared that he would free them from all service, 'forensi et privato'.<sup>2</sup>

Barmuir and Godonec:- In the reign of William, Richard Wales granted the land called Godonec in Galloway and also the land of Barmor. From these, which were to be held in free, pure, and perpetual alms, there were due annually two marks of silver, and the donation was declared to be free from all forinsec and earthly service towards the King and all other lords.<sup>3</sup> A confirmation by Alan Fitz-Walter includes a reservation of the service due from Richard and his heirs;<sup>4</sup> while a later charter by the donor Richard contains a quitclaim of the annual payment of the two marks.<sup>5</sup>

Berwick:- The monks of Melrose had various possessions in this town. From William the Lion they received the house and land of William Lunnok, in the south corner of Briggate, next the Tweed. The grant was in free, pure, and perpetual alms, the monks being quit of all service other than the offering of prayers.<sup>1</sup> From Moyses, the crossbow-maker, they received, in free and pure alms, ten acres of land outside the town, below Hangchester.<sup>2</sup> Walter Fitz-Alan granted them in perpetual alms a toft beside the Tweed, and twenty acres in the plain of Berwick<sup>3</sup> - a donation confirmed by William without reservation.<sup>4</sup> From Grim, the son of Guy, the carter of Roxburgh, they received a toft in the town in pure and perpetual alms. For this grant, however, the monks had to render the service due from Grim to his superior, William de Sumervil.<sup>5</sup> A later charter from the latter, however, freed the monks from this burden, viz. an annual payment of 6/8.<sup>6</sup> In the reign of Alexander 11., they received in free and perpetual alms from Robert de Bernham a fishing in Berwick stream.<sup>7</sup> From this Robert, also, the monks bought some land in Briggate - a transaction which is referred to in a quitclaim by William de Morthington.<sup>8</sup> Among other grants we may notice that of Peter the priest, of land in Snoco for a yearly payment of 2/- 'ad firmam domini regis'; also land near the castle fishpond for an annual return of 6d to the constable of the castle.<sup>10</sup> The confirmation by Alexander 11. makes no reference to the 2/- per year, but states that the land will be held in free, pure, and perpetual alms, making no return other than the spiritual service of prayers.<sup>11</sup> From Nicholas the weaver the monks had a grant in pure alms of half of his land in Briggate, while the other half they bought from him for 100 marks and a yearly payment in kind.<sup>12</sup>

(1) 23. (2) 26. (3) 19. (4) 20. (5) 28. (6) 350. (7) 178.  
 (8) 177. (9) 180. (10) 182. (11) 183. (12) 313.

Borthwick:- In the early 13th century, a portion of the lands of Borthwick belonged to the Harangs of Meinichoch. In Alexander 11.'s reign, Petronilla, daughter of Adam Harang, granted for the maintenance of the poor arriving at the gate of Melrose, that toft in the 'villa' of Bortwic and those two acres of land and that half acre of meadow in the same territory which in her widowhood she had given to Robert Poydras, remitting to the latter the yearly 'reddendo' of a pair of white gloves.<sup>1</sup>

Brunscath, Auchencrief, and Dergavel:- These lands were conferred by Thomas de Alneto in free and perpetual alms.<sup>2</sup> The latter held them in fee and heritage for the service of a quarter of a knight,<sup>3</sup> and Alexander 11., in his confirmation of the grant to Melrose, reserves the forinsec service in 'aids' which pertained to the fourth part of one knight, while remitting army and other forinsec service.<sup>4</sup>

Clifton:- In the late 12th century, Walter de Wildleshoures granted in pure and perpetual alms his land in the territory of Cliftun.<sup>5</sup> William's reservation contains the usual provision 'salvo servicio meo'.<sup>6</sup> Clifton was later possessed by the Corbets. Between 1201 and 1205, Robert Corbet made a grant in free, pure, and perpetual alms of his land therein,<sup>7</sup> while his brother Walter confirmed the gift on the same conditions.<sup>8</sup> This latter charter was confirmed by William with the usual reservation.<sup>9</sup>

Dalsangan and Bangour:- In 1205 the monks had a dispute con-



cerning their right to these lands with Peter de Curri, who, afterwards becoming a brother of the monastery, quitted his claim to them by a charter which he offered upon the high altar of the church.<sup>1</sup>

Dunscore:- From Affrica, daughter of Edgar, the monks received in pure and perpetual alms the fourth part of a full vill from the territory of Dunscore in Nithsdale. There are three charters from Affrica affirming the grant,<sup>2</sup> and a confirmation by Alexander II. without reservation.<sup>3</sup> The King himself granted the lake of Dunscore with a pennyland thereto pertaining. For this donation, which was in free, pure, and perpetual alms, no service was to be due other than the offering of prayers.<sup>4</sup>

Edmonston:- In the reign of Malcolm IV., Walter Fitz-Alan granted in free and perpetual alms four plough-gates of the land of Edmundistun.<sup>5</sup> In the next reign, there is a confirmation of this gift by Walter, grandson of the donor,<sup>6</sup> and this in turn is confirmed by William without reservation.<sup>7</sup> About the same time, Earl Patrick of Dunbar gave the monks one ploughgate in Edmundistun, near Greenlaw,<sup>8</sup> while the Lady Eva, wife of Roger de Quenci, bestowed on them 25 acres adjacent to their grange of Edmondston.<sup>9</sup> Both of these donations were in free and pure alms.

Eskdale:- Robert de Avenel, in the reign of Malcolm, gave the monks his land in Eskdale, consisting of two parts, Tumloher and Weidkerroc.<sup>10</sup> He reserved to himself the hunting rights and also an annual rent of five marks, both of

which he afterwards remitted. This grant, which was in free, pure, and perpetual alms, was confirmed by his son Gervase,<sup>1</sup> and by King William<sup>2</sup> who reserved his service due from Gervase and his heirs. Roger Avenel, son of Gervase, disputed the monks' right to the property, but a settlement was reached in 1235, in the presence of the King, when it was agreed that the rights of pasturage belonged to the Abbey, and the rights of hunting, forest, etc., to the Avenels.<sup>3</sup>

Ettrick:- The 'waste' of Ettrick was granted by Alexander 11. in 1236, with boundaries carefully defined. It was to be held in free, pure, and perpetual alms, and nothing was to be exacted save prayers in perpetuity.<sup>4</sup>

Fairnington:- About 1200, Roger Burnard granted 13 acres and a rood of his land in the territory of Farning:<sup>5</sup> dun. At the same time he granted part of his peatery therein, with as much of his land and moor adjacent as was necessary for drying their peats.<sup>6</sup> These grants, which were in free, pure, and perpetual alms, were confirmed by Alexander 11. with the usual reservation.<sup>7</sup> In 1252 Richard Burnard sold to the monks his meadow of Farningdun, called Estmedou, for the sum of 35 marks. The land was 'warranted' by Richard, and was to be held free of all service.<sup>8</sup>

Glasgow:- Bishop Jocelin, who had formerly been Abbot of Melrose, granted to his old Abbey in free and perpetual alms a toft in the burgh of Glasgow.<sup>9</sup>

Greenan:- From Roger de Scalebroc the monks held in free, pure, and perpetual alms a fishing at the mouth of

the Doon, with a saltpan and some land and tofts in the territory of Greenan.<sup>1</sup> He granted also on similar conditions the lands of Drumteismene, Alesburc, and Auchnephur, for an annual return of one mark of silver in respect of the last-named<sup>2</sup>, a burden which was later remitted by Roger's superior, Duncan, Earl of Carrick.<sup>3</sup> The latter's confirmations of these grants contain reservations of the services due to himself and the King by Roger and his heirs.<sup>4</sup>

Grubet:- In 1181, Uctred of Grubheued and Symon his heir granted some land in Grubheued, called Halkale, in free, pure, and perpetual alms.<sup>5</sup> He granted also that the monks should have a road across his land of Grubesheued as far as their own land, by which their carriages might pass freely to and from their grange of Hunedun.<sup>6</sup>

Hardlaw and Hungerig:- This land in the territory of Fogo was given by William, the son of Earl Patrick of Dunbar, in free, pure, and perpetual alms, for providing a pittance annually on the feast of the Blessed Virgin. The charter which is extant is a confirmation by William's son, Patrick.<sup>7</sup>

Harhope:- Between the years 1196 and 1214, Ellen de Moreville in exchange for the land in Cunningham which her brother William gave to the monks by his will, gave to Melrose some land in the territory of Killibeccokestun. She gave also common pasture in the territory of the township, all the common easements of the township, and free coming and going through her land.<sup>8</sup> This gift, which was to be held in free, pure, and perpetual alms, was confirmed by her son, Alan of Galloway,<sup>9</sup> and by King William who reserved his service.<sup>10</sup>

Hassendean:- In the reign of William, the church of Hassen-  
:dean belonged to Glasgow. After a dispute  
with the King over the patronage, the Bishop bestowed the church  
with its lands, tithes, and pertinents, on the monks of Melrose,  
reserving only the episcopal dues and a yearly pension of 20/-<sup>1</sup>.  
This grant, which was in free, quiet, and perpetual alms, was  
confirmed by William<sup>2</sup> and by Pope Celestine III.<sup>3</sup>

Hassington:- William de Alwenton, called also William de  
Grenlaw, granted in free, pure, and perpetual  
alms three ploughgates of land in Halsington,<sup>4</sup> a grant which was  
confirmed by Patrick, Earl of Dunbar.<sup>5</sup> Later, William bestowed  
on the monks his whole holding in Halsington. The conditions  
of tenure were as before, except that the monks were required to  
render to William's superior the 20th part of the service of one  
knight whenever 'common service' should be exacted from the  
land.<sup>6</sup> This grant was confirmed by his son William who makes no  
reference, however, to the burden stipulated by his father.<sup>7</sup>

Heartside and Spot:- In the reign of Malcolm, Earl Cospatric  
granted in perpetual alms the lands of  
Hertesheued and Spot.<sup>8</sup> There are confirmations of this grant by  
Malcolm, without reservation;<sup>9</sup> by Wallevus, son of Cospatric;<sup>10</sup>  
and by Earl Patrick, son of Wallevus,<sup>11</sup> the last-named adding five  
acres in Mosiburnerig - an addition which is confirmed by King  
William, with reservation.<sup>12</sup> From Patrick de Withicum the monks  
obtained in free, pure, and perpetual alms the land of Lochane-  
:shalech in Spot, free from all forinsec and earthly service.<sup>13</sup>

Hopcarthane:- Sir Symon Fraser the elder who died c.1291



bestowed on the monks all the land of South Kingdoris, along with the Chapel of St. Cuthbert of Kingildoris, and the whole land of Hopcarthane which lay on the other side of the Tweed.<sup>1</sup> The grant was made in free, quiet, pure, and perpetual alms and was confirmed by Sir Symon Fraser the younger, who added the right of free entry and egress to the monks, with their cattle and their herds.<sup>2</sup>

Horndean:- In the reign of Alexander III., William de Hornerden, knight, granted in free, pure, and perpetual alms the land of Milnecroft in Horndean.<sup>3</sup>

Hownam:- Early in William's reign, John, the son of Orm, granted the land of Hunedun in free, pure, and perpetual alms, for a yearly rent of 20/-.<sup>4</sup> This grant was confirmed by the King, who reserved his service,<sup>5</sup> and by William, the son of the donor.<sup>6</sup> Early in the next reign, this William gave the whole of the land of Brunecnolleflat in the fief of Hunum,<sup>7</sup> a grant in perpetual alms which was confirmed by his son John de Laundeles, who remitted to the monks the 20/- annual rent from the land of Hunedune.<sup>8</sup> Between 1175 and 1199, William, son of John Fitz-Orm, built a chapel on his lands of Rasawe, and gave the whole to Melrose in free, pure, and perpetual alms,<sup>9</sup> a grant which was confirmed by King William with reservation.<sup>10</sup>

Innerwick:- From Robert de Kent, in the reign of William, the monks obtained a grant in free, pure, and perpetual alms of part of his land and pasture in Innerwick. For a rent of 20/- yearly, the monks were to be free from all service.<sup>11</sup> Other grants in Innerwick were forthcoming from

William de Hauccesterton, Richard his brother, John de Montgomery, Vincent de Avenel, and Nicholas, son of Roland. These five also conceded common pasture to be held in feufarm for an annual payment of 10/-.<sup>1</sup> All the above were vassals of Roger, the son of Glay, who himself bestowed in pure and perpetual alms part of his holding in Innerwick<sup>2</sup> - a grant which was confirmed by his superior Walter Fitz-Alan.<sup>3</sup>

Kilham:- Walter de Kilnum, son of Robert de Scottun, granted eight acres of arable upon Witelawestele, with pasture, the whole to be held in free, pure, and perpetual alms, exempt from all service.<sup>4</sup>

Keresbarn:- From Thomas Colevill the monks received a fourth part of the land of Almelidun, called Keresbarn, for an annual rent of six marks of silver. The donor added that if it should please the King to remit this payment, he should exact nothing from the monks.<sup>5</sup>

Lammermuir:- In the reign of William, Earl Waltheof granted the right of common pasture in Lambermor,<sup>6</sup> while Earl Patrick gave 51 acres in the south part of Mosiburgierig, in addition to their land in Lambermor.<sup>7</sup> In the next reign, Alan Fitz-Rolland gave the monks his whole 'waste' of Lambermor in exchange for the land of Keresbarn, which the monks gave to him, reserving their pasture-rights.<sup>8</sup> All these grants were in free and perpetual alms, while there is a royal confirmation with reservation of Alan's charter.<sup>9</sup>

Lessudden:- The first grant of land in this territory was from

Richard de Londoniis, whose son Robert, between 1165 and 1214, confirmed to the monks the half ploughgate bestowed by his father, and added some land adjacent.<sup>1</sup> This gift in free and perpetual alms was confirmed by King William without reservation.<sup>2</sup> The lands of Wodfordhous in the same parish were, in the late 13th century, given to Melrose in free, pure, and perpetual alms by Robert de Wodforde.<sup>3</sup>

Lilliesleaf:- Between 1214 and 1249, Patrick de Ridale and his son Walter granted some land in this parish, to be held in free, pure, and perpetual alms, quit of all service.<sup>4</sup> Matilda Corbet, who seems to have been married to one of the family, quitclaimed to Patrick, in favour of the monks, a part of her land in Lilliesleaf,<sup>5</sup> which land Walter bestowed in a separate charter.<sup>6</sup> These grants, amounting to about two ploughgates, were confirmed by Margery de Vesci<sup>7</sup> and William her son,<sup>8</sup> to whom the Ridales were to pay the usual service. In the same reign, Adam of Durham sold to Melrose for 20/- all the land which he held in West Lilliesleaf<sup>9</sup> from Sir William de Ridale, who confirmed the sale.<sup>10</sup> Adam bound himself not to alienate the rest of the land which he possessed therein, so that he and his heirs might 'warrant' to the monks the portion they had purchased.

Mauchline:- Walter Fitz-Alan gave in free, pure, and perpetual alms the whole land of Machelin, with the pasture of his forest and one ploughgate, for a payment of 5 marks yearly.<sup>11</sup> This grant was confirmed by Alan his son,<sup>12</sup> and by King William, who reserved his service due from the donor.<sup>13</sup> In 1266, Alexander the Steward waived his right to the lands and pastures of Mauchelin and Karintabel, and exempted the monks from the jurisdiction of

his baronial court<sup>1</sup> - a concession which was confirmed by Alexander III. with reservation of service.<sup>2</sup>

Maxton:- In William's reign, Robert de Berkeley granted one ploughgate in Morhus, in the territory of Mackistun, in free, pure, and perpetual alms, and exempt from all forinsec service.<sup>3</sup> William's confirmation contained the customary reservation.<sup>4</sup> In exchange for that possession, the monks received, during the same reign, from Hugh de Normanville, the lands of Kelvesete and Faulawe, to be held on the same conditions.<sup>5</sup> In the next reign, John de Normanville, son of Hugh, bestowed various portions of his land within the parish - grants in free, pure, and perpetual alms,<sup>6</sup> and confirmed by the King with reservation of his service.<sup>7</sup> About 1250, a ploughgate in Maxton, called 'the ploughgate between the denes', was given first by John de Normanville to Walran his brother;<sup>8</sup> then by Walran to his brother Guy;<sup>9</sup> by Guy to his brother Thomas;<sup>10</sup> and then by Thomas to Melrose,<sup>11</sup> to whom it was confirmed by Guy and Walran,<sup>12</sup> the 'reddendo' in each case being a pair of gilt spurs yearly to the immediate superior, and a hawk or 3/- to the overlord.

Melrose:- From David I. the Abbey received the lands of Melrose Eldune, and Dernwic, the right of pasture between the Gala and the Leader, the fishing in the Tweed within their bounds, Galtuneshalech, and the whole land and wood of Galtuneside.<sup>14</sup> Malcolm IV. confirmed these and added a stead in Cumbesley for building a cow-house.<sup>15</sup> All these grants were in free and perpetual alms. In William's reign, from Alan Fitz-Rolland the monks received the lands of Alewentchawis and Threpwude on similar terms.<sup>16</sup> The lands of Bleneslei, Milcheside, and Sorulesfield were held by

(1) 322. (2) 323. (3) 90. (4) 91. (5) 92. (6) 244, 250, 251.  
 (7) 245, 254. (8) 338. (9) 339. (10) 340. (11) 341. (12) 342.  
 (13) 344. (14) 1. (15) 3. (16) 79.



the monks through grants from William the Lion,<sup>1</sup> Alan the Steward,<sup>2</sup> and the De Morevilles.<sup>3</sup> To these, Richard de Moreville added the chapel of St. Mary of the Park,<sup>4</sup> and the buildings of Cumbesley, Buchelm, and Witheley.<sup>5</sup> All these donations were in free and perpetual alms. A controversy between Melrose and Kelso as to the boundaries between their respective lands in Melrose and Bowden was amicably settled, Melrose being given some land in Primside<sup>6</sup> - a concession which was confirmed by Galfred Ridel,<sup>7</sup> the superior of the land in Primside given by Kelso to Melrose. There are further confirmations by King William<sup>8</sup> and by Eustace de Vesci.<sup>9</sup> Another controversy between the Abbey and Patrick, Earl of March, ended in the latter granting in free alms the whole arable land of Sorulesfield.<sup>10</sup>

Mospennoc:- Between 1214 and 1249, William Purveys of Mospennoc sold to the monks (who held the land of Hopcarthane on the opposite bank of the Tweed) for 20/- a right of way through the middle of his land of Mospennoc, both for themselves and their men.<sup>11</sup>

Mow:- Between 1165 and 1185, Anselm de Wittune granted his peatery of Molle.<sup>12</sup> He gave also some land with the meadow thereto pertaining,<sup>13</sup> and that portion of land in Molle, of about half a ploughgate, which lay next their land on the south of the hill of Hunedune.<sup>14</sup> These grants, all in pure and perpetual alms, were confirmed by William,<sup>15</sup> with reservation, by Richard of Lincoln,<sup>16</sup> and by Eustace de Vesci.<sup>17</sup> About 1236, Walter Fitz-Alan granted all the land of Molle which he held from William de Vesci in exchange for the land of Freretun, receiving along with the latter 200 marks from the monks.<sup>18</sup> This grant, which was in free,

(1) 93. (2) 97. (3) 94, 99. (4) 108. (5) 106, 107. (6) 146.  
 (7) 147. (8) 148. (9) 168. (10) 102, 104. (11) 238.  
 (12) 134. (13) 135. (14) 137. (15) 138. (16) 136. (17) 168.  
 (18) 142, 144.

pure, and perpetual alms, was confirmed by William de Vesci in the same terms.<sup>1</sup> Between 1227 and 1238, Adam de Hetune sold to the monks for £10 the land of Hungerig and the meadow of Holemede, and all rights which he had in the same, for a yearly payment of 10/-.<sup>2</sup> He bound himself, if he should be unable to warrant the land to the monks, to repay in full the money received, and promised to keep them free from exactions till they should be fully seised in the lands. Between 1279 and 1285, William de Sprouston, ex-vicar of Molle, with the consent of John de Vesci from whom he held them, gave to Melrose in free, pure, and perpetual alms the land of Altonburne in the parish of Molle.<sup>3</sup>

Painshiel:- In the reign of Alexander 11., John, son of Michael, granted in pure and perpetual alms all his land in Panneschelys,<sup>4</sup> a donation confirmed by Earl Patrick of Dunbar,<sup>5</sup> with a reservation of the service due from John, son of Wallevus, who, in his charter of confirmation,<sup>6</sup> reserves the service due from the donor, John, son of Michael. The latter granted also the land in Panneschelys held by Aldred the smith.<sup>7</sup> Henry de Beltun, in 1231, gave to the monks in perpetual feufarm the whole of his land of Kingissete in Panneschelys, for a yearly payment of 2 marks,<sup>8</sup> while John of North Berwick released the monks of the obligation to pay him 30/- for his rights in Kingissete.<sup>9</sup>

Peatcox:- In the reign of Alexander 11., Philip de Petcox gave to Melrose some land adjacent to their holding in Hertesheued, with 10 acres of arable in Beleside.<sup>10</sup> This grant in free, pure, and perpetual alms, was confirmed by Philip, son of the donor.<sup>11</sup>

Peebles:- In 1305, Sir William of Durem sold to Melrose that burgage in the town of Peebles which had belonged to Thomas Lilloc, deceased. The sum received was 14 marks.<sup>1</sup>

Prestonpans:- In the reign of William, Roland, the son of Uctred, granted to Melrose in pure and perpetual alms a saltpan in Preston, with some pasture, a toft and croft on which to build a dwelling-house, and easements from his wood of Preston to supply the pans.<sup>2</sup>

Reinpatrick:- From William de Brus, in the reign of William, the monks received in free and perpetual alms a fishing near the church of Renpatric in Annandale, with an acre of land and some pasture.<sup>3</sup> The grant was confirmed by the King with the usual reservation.<sup>4</sup>

Ringwood:- This land was, during Malcolm's reign, granted by Osulf, son of Uctred, in perpetual alms, free of all earthly service.<sup>5</sup> The gift was confirmed by Malcolm without reservation;<sup>6</sup> and in the next reign by Uctred, son of the donor,<sup>7</sup> by Philip de Vallon,<sup>8</sup> and by King William himself,<sup>9</sup> again without reservation.

Roxburgh:- The 'whole fishing of Old Rokesburg in the Tweed' was given by David I.,<sup>10</sup> and confirmed to the monks by his successors. In 1246, Alexander II. confirmed the sale made by John, the son of Aylbrith, of certain property and two burgages in the town. The King reserved for himself the sum of 10/- yearly and the other royal service pertaining to the two burgages.<sup>11</sup> About 1232, Robert de Vere, Earl of Oxford,<sup>12</sup> granted

to the monks four acres of arable land in the territory of Old Roxburgh, to be held in free, pure, and perpetual alms.

Selkirk:- From David 1. they received the rights of pasture and pannage, wood and timber, within his forest of Selkirk.<sup>1</sup> To this was added the 'fishing' of Selkirk by Malcolm.<sup>2</sup> In his confirmation, Alexander 11. added seven acres of land, some pasture, and liberty to take material from the King's forest for the sustentation of their 'yhar' or weir.<sup>3</sup> All these grants were in pure and perpetual alms, without reservation of service.

Torthorald:- In the reign of Alexander 11., John de Avenel granted that half ploughgate in Torthorald which he held of William Fitz-Glay. The land was to be held in pure and perpetual alms for payment annually to William of one pound of pepper, and for the performance of the King's forinsec service.<sup>4</sup>

Traquair:- The Scottish kings had their forest in the valley of the Quair, and from David the monks received full rights in his forests of Selkirk and Traquair.<sup>5</sup> The grant, which was in perpetual alms, was confirmed by Earl Henry,<sup>6</sup> by Malcolm,<sup>7</sup> and by William the Lion.<sup>8</sup>

Trolhope:- Robert de Muscampo granted in pure and perpetual alms that part of his land, called Trolhope, in the territory of Hethpol, with liberty to cut wood in the forest for building.<sup>9</sup>

Turnberry and Maybole:- In the reign of William, Duncan, Earl of Carrick, granted in pure and perpetual alms two saltpans in his land of Tornebiri,<sup>10</sup> with 8 acres



of arable land and pasture. He also granted in free, pure, and perpetual alms the lands of Maybothelbeg and Bethoc, for a yearly payment of two marks of silver in respect of the latter<sup>1</sup> - a burden which he later remitted.<sup>2</sup> This grant was confirmed by Alexander (1236) with a reservation of his service.<sup>3</sup> With regard to the monks' lands in Maybole, there is a charter by Robert de Brus (1301) confirming the immunity of the Abbey from all forinsec service, save military service in defence of the kingdom.<sup>4</sup>

Whitton:- Between 1175 and 1199, Robert de Bernaldebi granted in free alms 20 acres of land, called Ravenessen.<sup>5</sup> He gave also some more land in Wittun in free, pure, and perpetual alms.<sup>6</sup> From Geoffrey, son of Walleve of Lilliesleaf, the monks had three grants of land in Wittun, all in free, pure, and perpetual alms, and amounting in all to some four bovates.<sup>7</sup> Geoffrey Cocus granted one bovat to the Hospital of Jerusalem in pure and perpetual alms, for one pound of cumin yearly, on condition that Isabella, wife of William Ridale, should hold the said bovat in fee and heritage from the Hospital, for payment annually of the pound of cumin.<sup>8</sup> The land was later given to Melrose by Isabella in free, pure, and perpetual alms.<sup>9</sup> All the above grants were confirmed by Patrick de Ridale, feudal superior of Whitton, with reservation of the services due to him from the various donors.<sup>10</sup> Patrick also gave the monks a general grant or confirmation of 'that portion of land which they held in the territory of Wittun, namely, towards the grange of Hunedune', in pure and perpetual alms, free of all forinsec service.<sup>11</sup> Further confirmations of the monks' holdings in Whitton are recorded by Robert de Brus<sup>12</sup> (c.1190), King William,<sup>13</sup> and Eustace de Vesci.<sup>14</sup>

(1) 29. (2) 189. (3) 184. (4) 351. (5) 152. (6) 154.  
 (7) 156, 158, 160. (8) 161. (9) 163. (10) 153, 155, 157, 159,  
 162, 166. (11) 166\* (12) 169. (13) 170. (14) 168.

There have been noted above in all some 102 charters, i.e. exclusive of confirmations. Of these, 92 are grants in frankalmoign, varying in expression from the simple 'in alms' to the fuller 'in free, pure, and perpetual alms'. Two charters record grants in feufarm for money-rents, while in eight, nothing is said as to the mode of tenure, although, in so far as they are mainly early grants, we may take them as approximating to the normal eleemosynary grant. In eleven cases there is added to the charter of frankalmoign some annual payment of money, generally small, in recognition of the land bestowed. These and the other services with which the Abbey possessions were burdened we need not repeat here, for they have been mentioned in detail above.

(b) Dunfermline:- We intended, at first, to specify here the names of all the benefactors and the lands, etc., conveyed by them, but, feeling that such a method would merely add to the length of this essay without essentially clarifying the question at issue, we have, in this and the following two analyses, contented ourselves with a review of the 'tenendum' clauses and the services stipulated therein. No account has been taken of charters of confirmation except in so far as they contained some change in the conditions of tenure.

The Register of Dunfermline, for the period under review, shows us that 45 benefactors granted 54 separate charters to the Abbey, in which some 118 various donations (lands, tofts, churches, fishings, etc.) were conferred on the monks. Of these 54, 34 convey gifts to be held in alms, the expression of the clause varying as usual; 12 have the 'tenendum' clause expressed 'to be held freely and quietly', or 'to be held in perpetuity'; 5 are charters of 'quitclaim', one is a grant in free burgage,

one is a grant in feufarm, while in one, nothing is said as to the mode of tenure.

With regard to the services reserved in these charters, there is significantly little to note:-

The duty of helping in the defence of the kingdom, and the royal right to hear appeals from the Abbot's court, mentioned in David I.'s confirmations, are omitted by William, Alexander II. and Alexander III. It must be assumed, however, that these reservations were maintained throughout the 13th century.

In respect of the land of Dollar, granted by Alexander II., the monks had to sustain the whole forinsec burden. A similar duty was required from the land of Beeth Waldef, given by Alexander III. Forinsec service was further due from the lands of East Lusker and West Beeth, granted by Alexander Uniet and Malcolm de Moravia respectively.

The service of supplying 'hospitagium' was due to Walter Fitz-Alan and David de Lyndesey from tofts in Dunfermline and Haddington respectively.

Money payments were returnable as follows: Three shillings yearly to Kelso Abbey from certain land in Berwick; 'common aid' to the Crown from land given by Malcolm, Earl of Athole; £10 yearly to Alexander Uniet from the land of East Lusker.

Finally, the 'reddendo' of a pair of iron spurs was due to Adam FitzPatrick from a holding in Cresbarrin.



(c) Glasgow:- Although for the period under review, i.e. from the early 12th century to the end of the 13th, there are 257 charters, documents, etc., noted in the Register, there are only some 32 which record grants of land. In estimating this number, of course, we have not considered the confirmations, Papal, episcopal, and royal, of which there is a goodly number in this Chartulary.

Of these 32 charters, 24 record grants in alms, more or less fully expressed; 5 are 'quitclaims' in perpetuity; 1 is to be held freely and quietly, while in 2 there is nothing stated beyond the bare grant. Apart from the charter of Robert de Line (no. 87) and that of Malcolm IV.,<sup>1</sup> which reserve forinsec service and 'hosting' respectively, there is no sign in these 32 charters of any secular service being stipulated.

We realise well that these charters by no means exhaust the possessions of Glasgow during these two centuries, for many lands will be found mentioned in the Register as belonging to that bishopric which are not specified in the 32. To the latter have we confined ourselves, because the original conditions of tenure can most safely be studied in the charters which first convey the land.

(d) Arbroath:- This foundation by William the Lion was munificently endowed by him, by his son and successor, and by their leading subjects. As a result it became one of the wealthiest Abbeys in the kingdom. With regard to its possessions, we note some 71 charters of donation. Of these,

(1) Glasgow, vol. 1., no. 15.



70 record grants to be held in alms, 1 in feufarm, and in the other, there is no mode of tenure stated.

The following services are specified:-

- a. Forinsec army service in respect of the land of Forglen, granted along with the custody of the Brecebennach.<sup>1</sup>
- b. Forinsec army service from the land of Tarves.<sup>2</sup>
- c. Forinsec service in army and aids from certain lands in the parish of Fordun.<sup>3</sup>
- d. Forinsec service in full and 100/- yearly from the land of Banchrideven, granted in feufarm.<sup>4</sup>
- e. Common aid from a toft in the villa of Stracathro.<sup>5</sup>
- f. Duty of 'hospitagium' from a toft in Aberdeen.<sup>6</sup>

.....

One thing is clear from the above brief analysis of these chartularies, and that is that more information is to be derived from the miscellaneous documents contained in these Registers, other than the charters which convey the grants. For example, the deeds which describe the settling of controversies, or those which contain modifications or adjustments of the original conditions of tenure, or those which set forth compromises or private agreements between donor and donee, are generally much more

illuminating with regard to the problem of the secular service. From a consideration of the donations recorded in all the printed Scottish Chartularies, it might safely be stated that from ninety to ninety-five per cent. of the lands possessed by the Church were held in frankalmoign. As we have shown, however, tenure in frankalmoign was not of necessity so highly privileged as feudal theory would seem to imply.

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#### J. Contemporary Foreign Practice:-

It will be instructive, and, for comparative purposes, not irrelevant to our subject, to consider very briefly the position of the Church with regard to secular services in some of the chief European countries. For this purpose, we have selected three, viz. England, France, and Germany, as likely to prove most helpful. Much material can be obtained in this respect, fuller than for Scotland, but we shall limit ourselves largely to the military aspects of secular service.

1. England:- While in Scotland we possess no record of the amount of military service demanded from the bishoprics and religious houses generally, in England the 'servitia debita' in this respect were specified with minute particularity, and their variations at different times can be noted. From the 'Cartae Baronum' and the 'Annual Rolls' may be collected the amount of the military service required from most of the English

bishoprics and larger monasteries. For example, Canterbury was assessed at 60 knights; York, first at 7, afterwards at 20; Winchester and Lincoln, each at 60; Worcester, first at 50, and then at 60; Ely and Norwich, each at 40; Salisbury at 32; Bath and London at 20 each; Hereford and Chester at 15 each; Durham at 10, and Chichester at 4. To these we may add a few of the great religious houses: Peterborough, 60; Glastonbury, first 40, and then 60; St. Edmundsbury, 40; Abingdon, 30; Coventry, 10; Ramsey, 4, and many others with similar small obligations.

What these figures set forth is not the extent of lands held by each of these ecclesiastical feudatories, but the extent that was held by knight-service, or, in other words, of how many knights' fees their lands consisted. Nor do we mean that those lands granted to the Church in frankalmoign by the Crown or by a subject were burdened by knight-service. The explanation of these systematic assessments is that, after the Conquest, William I. defined the number of knights to be found for him by the prelates, by the cathedral and monastic churches whose lands had not been forfeited. According to Maitland, in this fixing of the 'servitium debitum' of the great prelates, the King did not contract with the various churches, but dictated terms to them. The result of this arbitrary allocation led to several striking contrasts; for example, the relative wealth of the abbeys of Peterborough, St. Edmunds, St. Albans, and Ramsey can hardly have been expressed by the figures 60, 40, 6, and 4, which represented their fighting strength in the 12th century. William may have allowed himself to be influenced in some cases by charters of immunity dating from Saxon times and produced by the churches in their defence. It is true that no record evidence exists of this detailing of knight-service on his part, and it is



now generally held that the quota of service exacted was not determined by the area or value of the lands granted (or retained) but was based upon the unit of the feudal host - the 'constabularia' of ten knights.

When it is said, therefore, that the abbot of Ramsey holds his large territories by the service of four knights, it is correct to say that he holds four knights' fees, but it does not follow that these four fees were distinct and separate areas. The correct interpretation is that the abbot had several tenants who owed him military service, and these, on any particular occasion, chose the four who should actually perform the service, while the rest contributed towards defraying the expenses of the four.

The extent of land held by the Church in frankalmoign was much smaller in England than in Scotland. This is especially true of grants from the Crown. With regard to lands so held from subjects, the Crown was quite prepared to respect the pious intention of the donor so far as to leave that land free from secular exaction, provided the donor held other estates whence the King could get his full service, i.e. including that due from the land now held by the Church. Tenure in frankalmoign was thus generally respected. For example, the Register of the Abbey of Meaux shows how the abbot proved that he held all his lands in Yorkshire by frankalmoign and owed no military service.<sup>1</sup> Despite this, however, he insisted that the lands held of him were held by military tenure, and owed the usual 'incidents' attaching to that tenure. In thus enfeoffing military tenants, the great churchmen were not necessarily thinking of service due to the Crown, for they had their own enemies, against whom the protection

(1) Op. cit., vol. 2., 210, 222-3.



afforded by the services of their tenants would be very desirable.

The English equivalent of what is termed in Scotland 'forinsecum servitium in exercitu' was service in the 'fyrd'. This service, which was included in the Anglo-Saxon 'trinoda necessitas', was incumbent upon all holders of land, but evidence as early as the 'Dooms' of Ine of Wessex shows that it was not necessarily confined to such. It survived the Conquest and was occasionally called out for defensive purposes. The tenants of Church lands, as well as those of secular holdings, were liable to be called upon for this service. It was the only military service that could be demanded by what may be termed English (i.e. pre-Norman and non-feudal) law.

The duty of helping to garrison the royal castles was often joined to that of attending the King in his wars. For example, the knights of the Abbey of Abingdon were bound to guard the royal castle of Windsor; the knights of Peterborough, the castle of Rockingham; the knights of St. Edmunds, the castle of Norwich, etc. The kings were accustomed to regard all castles as in a sense their own, and so the duty of castle-guard was usually conceived as a royal service.

We cannot speak here of the other services, such as those considered above in our analysis of the Scottish registers. The main point is this - that the same rules governed tenure in frankalmoign in both countries, i.e. its privileged nature was recognised; but the extent of lands so held in England was nothing to the wide prevalence of that tenure in the north. There is another point of distinction between the practices of the two countries, viz. the question of the right of jurisdiction over the lands held by the Church in frankalmoign. In 12th century

England, the essential feature of the 'elemosina' was that the land was subject to no jurisdiction save that of the courts of the Church. But by the close of the 13th century, the competence of the ecclesiastical courts had been considerably curtailed: the term 'elemosina' no longer stands out in sharp distinction from the ordinary lay fee. The contrast to the latter, as envisaged by the royal courts, is now confined to consecrated soil, and to the sites of churches and monasteries and their churchyards. The clergy did not relinquish their jurisdictional rights or acquiesce in their delimitation without a struggle. For example, Richard Marsh, at the instance of Robert Grosseteste, writes thus: "He who does any injury to the frankalmoign of the church, which therefore is consecrated to God, commits sacrilege; for that it is 'res sacra', being dedicated to God, exempt from secular power, subject to the ecclesiastical forum, and therefore to be protected by the laws of the church."<sup>1</sup> In Scotland, on the other hand, the rights of the Church in this respect were not seriously challenged, for the reserving of the pleas of the Crown is no parallel. Whereas the English writ of 'Circumspecte Agatis' of 1275 struck a heavy blow at the Church courts and the scope of their jurisdiction, the Scottish prelates of the same period enjoyed their judicial rights as fully as before.

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2. France:- In France, as in Scotland and England, the great Churchmen were landed proprietors on a large scale. Like the secular lords, they required retinues of knights for purposes of defence and display. For this object, they split up their territories into fiefs through which they

(1) Cited by Maitland, 'English Law', vol. 1., p. 230.

attached to themselves vassals who owed them homage and service. The prelates themselves, being assimilated to the rank of high dignitaries or officials, had, from the time of Charlemagne, owed homage to the Crown, and been obliged to lead their men to join the King's army. This practice was later maintained in the north of the kingdom of France, and took such deep root in that of Germany that the prelates came to consider their ecclesiastical dignity itself as a fief which they held from the Crown.

The great religious houses had often much need to defend themselves from the grasping hands of the secular landholders in their neighbourhood, for the latter generally ignored threats of excommunication. Many of the monasteries came to an agreement with some lord who undertook to defend them in return for the dues forthcoming from the abbey tenants. Such a person was known as a 'guardian' or an 'advocate' ('gardien' or 'avoué'), in Germany, 'voigt'. The bishoprics had occasionally a lay protector of a similar nature, called the 'vidame' ('vice-dominus'). Amongst the duties of these men were these: to summon the vassals of the church to military service; to lead them when assembled; to dispense justice in the name of the abbot or bishop; to represent the prelate in the judicial combat ('duel judiciaire'). The military role of the 'avoué' was, in the 11th and 12th centuries, much more important than that of the 'vidame', for, during this period, the bishop, much more than the abbot, did not hesitate to lead his vassals himself to discharge the military obligation of his lands.

In many cases, however, these lay champions oppressed the lands of the Church instead of defending them, and the monastic chartularies especially are full of complaints against



the actions of the 'avoués'. In the 13th century in particular, the latter fell into decadence. They committed innumerable abuses, for example, they levied very heavy taxes on the tenants of the abbey. In many cases, indeed, the abbot is found nominating a second 'avoué' to protect him from the excesses of the first!

Besides the knights, enfeoffed from the lands of the church, the prelates maintained near them a body of armed servants. In the Latin of the charters they are known as 'ministeriales', i.e. literally 'servants'. (German - 'dienstmannen') These men, who are paralleled by the Anglo-Saxon 'gesiths' and 'thegns', discharged also the duties and services of knights, i.e. they escorted their master, accompanied him to war, and guarded his castles. This institution rapidly declined in France, for the 'ministeriales', as was natural from the nature of their duties, came soon to <sup>be</sup> confused with, and in many cases identified with the ordinary vassals or tenants of the Church.

The military system of mediaeval France presents an interesting comparison with that of contemporary Scotland. It consisted of the two main elements - the active force and the reserve. Under the feudal system which rose from the ashes of the Carolingian empire, the first of these two was essentially bound up with the possession of land, 'enracinée au sol', as Viollet expresses it. As for the military service due from the great vassals, clerical and lay alike, it was often uncertain and precarious in the extreme. To quote Viollet again: "Croirait-on qu'au XIIe siècle un puissant feudataire pensait se mettre à l'abri de tout reproche légal en amenant au roi 10 chevaliers seulement?" The reserve force was summoned only in time of great

(1) 'Histoire des Institutions politiques', II. p. 431.



emergency. It was composed of the great feudatories and the mass of the freemen, and cannot be considered as part of the feudal army service. It was a far older service, and one due always to the Crown. Here we have a direct counterpart to our 'Scottish service' and to the forinsec army service of feudal Scotland. It should be noted that in the 11th and 12th centuries the great French feudatories evinced a desire to rid themselves of this extra non-feudal burden, while the prelates shunned it and the freemen sought exemption.

In this connection, further, there occur frequently in French documents the terms 'ban', 'retroban', and 'arrière-ban'. The word 'ban' means simply an 'order', and was applied to the military service owed by the immediate tenants of the lord who issues the 'ban', while the other two terms mean the same thing, viz. the military service owed in times of national danger by the 'arrières vassaux', the mesne tenants. Boutaric, in his 'Institutions Militaires de la France', thus defines the two terms: "Ban est le mandement public fait aux vassaux du roi de France de se trouver à un lieu d'assemblée déterminé pour servir dans l'armée, ou en personne, ou par des gens qui les représentent, à proportion du revenu et de la qualité de leurs fiefs... Le ban se rapporte aux fiefs; l'arrière-ban aux arrière-fiefs.... Vassaux et arrière-vassaux devaient se trouver au jour assigné au chef lieu du bailliage pour la 'montre' revue faite par commissaires ou contrôleurs ordinaires des guerres.." The penalty for unjustifiable absence was the confiscation of the fief.

The duties of the vassal, of the clerical lord as well as of the secular, are sometimes summed up in the one word - 'service'; sometimes expressed in a formula which dates from the

10th century - 'auxilium et consilium', which might be translated as 'services military and advisory'. The 'auxilium' was above all military: the vassal was the lord's soldier; he had to help in his lord's wars, for which purpose he had received his fief. The vassal swore to defend his lord 'contre tous hommes et femmes qui peuvent vivre ou mourir'. This obligation, in origin wide and undefined, became later clearer and more specific, and several well-marked services came to be distinguished:-

First, what were termed 'l'ost et chevauchée', viz. the obligation of accompanying the lord, both in his expeditions ('ost') and in his incursions into the country of an enemy ('chevauchée'). We see here a fairly close parallel to the 'feacht' and 'sluaged' of Celtic Scotland, and to the 'expeditio' and 'exercitus' of feudal Scotland. This service, especially in the 13th century, was reduced in extent and duration: the vassal did not follow his lord (at least at his own expense) save within the bounds of a region often very restricted; and served him only for a period fixed by custom, usually forty days.

Secondly, there was what was known as 'l'estage', or the duty of garrisoning the lord's castle, sometimes accompanied by one's family, and sometimes alone. The 'aide' was also, although in a lesser degree, a payment in money or in kind, due by the vassal on certain fixed occasions, e.g. the 'rachat' or 'relief', the 'aide aux quatre cas' (ransom, knighting of eldest son, marriage of eldest daughter, and crusade), and a payment in place of the 'droit de gîte' or 'albergement', which was the French equivalent of what was called in Scotland the right of 'hospitagium'.

Thirdly, the 'conseil' ('consilium') obliged the

vassal to repair to the residence of his lord for the purpose of giving advice if any difficult situation should arise. It was sometimes known also as 'service de cour', and the obligation of attending these gatherings was often limited to three occasions, usually the three great festivals of Easter, Whitsunday, and Christmas. The Scottish equivalent of this is supplied by such phrases as 'faciendo tres sectas' which are so common in the charters of the time.

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3. Germany:- With the disruption of the Carolingian Empire, the relations of Church and State in Germany began to be reversed, for now the former began to control the latter. The royal demesne became impoverished as a result of land grants to the Church, and the Crown was usually too weak to enforce the actual terms of the grant. This rapid acquisition of landed wealth entangled the Church more and more in the coils of feudalism. The institution of the office of 'voigt' or 'advocate' was an attempt on the part of the Crown to recover in some measure the material prosperity which was declining so fast. As in France, however, this office was a formidable weapon in the hands of an unscrupulous baron, and the practice of appropriating the Church property under guise of protecting it went on apace.

The German ecclesiastical hierarchy, to a much greater degree than the French, became increasingly a military caste like the lay nobles. There grew up a nobility composed of archbishops and bishops, who were at the same time dukes or counts.

The lands of the Church were regarded, in practice and theory alike, as a particular kind of barony or fief which the bishop or abbot held immediately of the king as overlord. Church and State both acquiesced in this state of affairs. Vacant sees and abbeys were treated as knights' fees, the revenue attaching to the office being claimed by the Crown on the analogy of the 'relief' payable by lay fiefs.

The great prelates were servants of the State as well as of the Church. They were generally obliged to render some sort of personal service to the King, such as to attend councils, to go on missions, to act as ambassadors to Rome or to a foreign court. Under the form of 'gifts' ('dona') they were required to make certain contributions to the royal needs. More is known about the political and military obligations of bishops and abbots than about their financial relations to the secular government. From their position as great landed proprietors, they were called upon for military service, both from themselves and their vassals, for in Germany as elsewhere, military duties were at this time based upon the possession of land. Much light is shed on this question by a document named 'Notitia de servitio monasteriorum' which dates from the reign of Louis the Pious, (814-840). The Crown lived, in no inconsiderable degree, upon the revenues of the Church and fought his wars in large part with Church vassals. Under Otto I. the military service of the German bishops was systematised, and the long line of fighting bishops in the Saxon era shows how manfully they responded to the call. Later in the same reign the monasteries were similarly mobilised, though not to the same extent. For a campaign of 981 no less than three quarters of the army were drawn from the lands of the Church. The Crown gave lands to the Church to increase its military effectiveness, and all grants were made subject to this stipulation.



The burden of secular service fell more heavily upon the bishops than upon the abbots, and the same applied to the secular and the regular clergy in general. The vows and the mode of life of the latter alienated them very largely from secular activities. But, with regard to the bishop, his place was at the Court, where he sat in the council of the king, travelled on circuit through the diocese, and led his vassals to battle whenever the necessity arose. The military burden on the Church was especially heavy in view of the fact that the services of the lay barons could not be depended upon, and that the free warrior class had declined greatly as a result of the extension of feudalism. From the revenues of the Church, further, there had to be borne the burden of supporting the Court, which was a wandering one with no fixed seat. The material wealth of the abbeys was greater even than that of the bishoprics, for, not only did they possess more land, but a greater part of it was free from the burden of State taxes by virtue of special privileges and immunities conveyed. Nevertheless, personal services were exacted from the tenants of the abbey as well as from those of the secular clergy. This state of affairs continued right throughout the feudal period. For example, when, in 1155, the bishops of Oldenburg and Halberstadt refused to do military service, Frederick Barbarossa promptly seized their lands and annexed them. Indeed, apart from the prelates, from whom military service continued to be rigidly exacted in virtue of their vast landed possessions, there were relatively few real military vassals in the strict sense of the term, i.e. nobles who held fiefs subject to that service, and most of these were to be found along the French border.

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This brief glance at the position in other countries shows that the Scottish Church, though it may not have been so entirely free from secular services as many have held, was certainly more highly privileged in its position of landholder than the Church in foreign lands. The Scottish bishops and abbots, sheltering behind their wall of immunity, were widely removed from the prelates of contemporary England with their military obligations carefully defined by the Crown in terms of knight-service; from those of contemporary France, from whose lands as well as from the lay fiefs military service was required; and from the lordly German prelates who were the chief military and financial pillars of the Crown.

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K. General Conclusions:-

The various Scottish bishoprics and abbeys became, from the early part of the 12th century, increasingly more powerful in a territorial sense. Taking all the land grants made up to the close of the 13th century, we may say that over ninety per cent. of them were made in frankalmoign. Nor can it be said that the immunities normally attaching to that tenure were not observed. The crucial difference between the positions of the Church in Scotland and England lies in the fact that, in the latter country, the majority of the lands held in chief of the Crown were held by the same tenure as those of the lay barons, whereas, in the former, such a practice was quite exceptional. This difference is partly

due to the fact that, in England, many of the Church lands were grants dating from Anglo-Saxon times, and these were usually confirmed by William on conditions of knight-service.

In Scotland, after the death of David I., there is noticeable, on the part of the Crown, a tendency to tighten up conditions of tenure. From the reign of William onwards, the Scottish kings generally see to it that, while no restrictions are put on grants to the Church, the forinsec services due from the land to the Crown are not in any way imperilled. As indicated above, the inclusion of the 'salvo servitio' clause in the royal confirmations was not a blow struck at the Church and its lands, which, in so far as they were eleemosynary fiefs, continued to be exempt from the forinsec burden. It was purely a precautionary measure aimed at the Church benefactors, demanding as it did that the feudal and forinsec services pertaining to all donations should be discharged by the donors from their other holdings.

There was one duty, however, from which not even the Churchmen and their lands were exempted, viz. the supplying of men to the King's army for the defence of the country in case of invasion. This conclusion must be reached, and the duty held to apply even to those churches and abbeys in whose foundation charters the clause 'salva defensione regni mei' does not appear. Such a service was undoubtedly forinsec in nature, but the rest of the forinsec military burden was in the great majority of grants remitted by the donor. The other forinsec duties were not normally exigible from the Church lands - a condition of affairs which outlived the feudal period. The common or forinsec 'aid' stood probably on the same footing as the military obligation, i.e. 'elemosinae' were exempt from its incidence, unless the imposition

sprang from the exigencies of national defence. Such an 'aid' might well have been termed 'auxilium exercitus'.

Apart from these forinsec services which were survivals from the pre-feudal age, and which were assessed in proportion to the extent of land held, Church lands as a whole enjoyed immunity from such burdens as 'court-suit', 'multure', 'toll', 'can', 'corody', etc., and such typical feudal prestations as 'scutage', 'relief', 'wardship', and 'marriage'. It is quite exceptional to find any of these services reserved in the charter of the ordinary grant in alms. Even where the grants are in feufarm, or in burgage, or even in fee and heritage, it is not unusual to see, coupled with the 'reddendo', a clause conveying a comprehensive immunity in other respects.

As a result of the highly privileged nature of its tenure, the Church was able in its turn to be rather more lenient towards its tenants than the average secular lord. It was not really until the 16th century that the Crown began seriously to consider the question of extracting money from the lands of the Church. The feuing of the kirklands was encouraged by James V. as a step towards the realisation of this aim, for it was a process which would facilitate payments. This need of money gradually pressed upon the ecclesiastical tenants, and the prelates ceased to be so indulgent as landlords.

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L. Scottish Religious Foundations of the 12th and 13th Centuries:-

The following list, which is chronologically arranged, is not complete, but, including as it does all the principal foundations, will serve to indicate the prevalence of such endowments and the very great landed wealth of the mediaeval Church in Scotland.

St. Andrews:- The bishopric is said to date from the 9th century, and, in 908, the primacy was transferred to it from Dunkeld. The cathedral was founded by Bishop Arnold (1159-1162) to supply more ample accommodation than was afforded by the church of St. Regulus.

Aberdeen:- The see was first founded at Mortlach by Malcolm 11. in 1004, but in 1137 David 1. transferred the bishopric to Old Aberdeen.

Dunfermline:- Under the influence of Queen Margaret in 1075 the foundations were laid of a Benedictine priory, which was raised to the rank of an abbey by David 1.

Moray:- The bishopric was founded by Alexander 1. in 1107, the site of the cathedral being eventually fixed at Elgin.

Glasgow:- In 1115 an inquisition was ordered by David, then prince of Cumbria, into the lands and churches then belonging to the bishopric, and from the deed then drawn up it is clear that at that date a cathedral had already been endowed.

Scone:- The monastery of Scone, a Culdee foundation of unknown antiquity, was re-formed by Alexander 1. and his Queen Sibilla, who, in 1115, established there an abbey, colonised by canons regular of the Order of St. Augustine, brought from the church of St. Oswald in Yorkshire.

Inchcolm:- As the name implies, its associations date back to the time of Columba. The Augustinian monastery was founded by Alexander I. in 1123.

Dunkeld:- As early as the beginning of the 8th century, the Culdees possessed a monastery here which was converted into a cathedral by David I. in 1127.

Kelso:- The abbey was founded in 1128 by David I. for monks from Tiron in Picardy, whom he transferred hither from Selkirk where they had been installed fifteen years earlier.

Holyrood:- This was an abbey of canons regular of the rule of St. Augustine founded by David I. in 1128.

St. Andrews:- The priory of canons regular was founded by Robert, Bishop of St. Andrews, (1122-1159).

Melrose:- This abbey, which was founded in 1136 by David I., was a Cistercian settlement, colonised from Rievaulx.

Jedburgh:- In 1118 according to tradition, but more probably as late as 1138, David I. here founded a priory for Augustinian monks from the abbey of St. Quentin at Beauvais in France, and in 1147 he erected it into an abbey.

Newbattle:- This was founded by David I. in 1140 and colonised by Cistercians brought from Melrose.

Dundrennan:- Founded by Fergus, lord of Galloway, in 1140, it was a Cistercian house, colonised from Rievaulx.

Cambuskenneth:- Founded by David I. in 1147 for monks of the Order of St. Augustine.

Kinloss:- Situated near Forres in Elgin, it was a Cistercian establishment founded by David I. in 1150.

- Dryburgh:- Founded in 1150 by David 1., though it has also been ascribed to Hugh de Moreville.
- Brechin:- Erected by David 1. as a bishopric in 1150.
- Paisley:- Founded in 1163 as a Cluniac monastery by Walter Fitz-Alan, first High Steward of Scotland, it became an abbey in 1219.
- Coldstream:- A Cistercian priory, founded about 1165 by Cospatrick, Earl of Dunbar.
- Arbroath:- This was an establishment of Tironensian Benedictines, founded in 1178 by William the Lion.
- Lindores:- Founded in 1198-99 by David, Earl of Huntingdon, grandson of David 1.
- Inchaffray:- Founded in 1200 by Gilbert, Earl of Strathearn, for Augustinian canons.
- Culross:- This was a Cistercian abbey founded in 1217 by Malcolm, Earl of Fife.
- Balmerino:- A Cistercian abbey founded in 1227 by Ermengarde, widow of William the Lion, and by her son, Alexander 11.
- Beaulieu:- Situated some ten miles west of Inverness, this priory was founded in 1230 for Cistercian monks, by John Bisset of the Aird.

When we bear in mind that to this list could be added the bishoprics of Dunblane, Ross, Caithness, and Argyre, and the religious houses of Coldingham, Soltre, Pluscarden, Lincluden, North Berwick, Sweetheart, Manuel, etc., the landed wealth and importance of the Church will readily be realised.

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